S. Hrg. 100-1074

VOLUNTEER PROTECTION ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON
COURTS AND ADMINISTRATIVE PRACTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 929

A BILL ENTITLED THE "VOLUNTEER PROTECTION ACT OF 1987"

MAY 20, 1988

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VOLUNTEER PROTECTION ACT OF 1987

FRIDAY, MAY 20, 1988

U.S. SENATE,
SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee convened, pursuant to notice, at 10:45 a.m., in room SD-226, Dirksen Senate Office Building (Hon. Howell Heflin, chairman of the subcommittee) presiding.

Also present: Senator Thurmond.

Staff present: Tom Young (Senator Heflin); Sam Gerdano (Senator Grassley); and Kevin McMachon (Senator Thurmond).

OPENING STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator **HEFLIN**. We will proceed to the hearing on S. 929, the Volunteer Protection Act.

I would like to welcome the witnesses.

The Volunteer Protection Act is a bill which attempts to protect and encourage the volunteer spirit in this country. This bill as currently drafted will encourage States to enact laws to protect volunteers by threatening them with the loss of Federal funds.

Specifically, this bill provides that a volunteer for a nonprofit organization or a governmental entity will be immune from civil liability for an act or omission resulting in damage or injury to another person, if the volunteer was acting in good faith, within the scope of his official duties, and that damage or injury was not caused by willful or wanton misconduct.

I am an overall supporter of any action which Congress can take to strengthen the volunteer spirit in this country. Many people do not realize the vital role which volunteers play in our society. The Volunteers of America feed the poor and hungry of our land; they supervise the sporting and recreational activity of our children, and they provide many additional services to the communities. Volunteers also provide services which the Government cannot afford to provide in these times of budgetary crisis.

I look forward to hearing today's testimony about the need for the Volunteer Protection Act.

Senator Melcher, the sponsor of this bill, was here, but due to the length of the previous hearing he had to leave for another appointment. I apologize for that, but sometimes hearings last longer than we anticipate.

Senator Melcher may return, but in the event that he doesn't, his written testimony will be placed in the record in its entirety.

Now I would like to insert for the record a statement of Senator Thurmond and the text of S. 929.

[The prepared statement of Senator Thurmond and a copy of S. 929 follow:]

STATEMENT BY SENATOR STROM THURMOND (R-S.C.) BEFORE THE SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE REFERENCE, HEARING ON S.929, THE VOLUNTEER PROTECTION ACT. FRIDAY, MAY 20, 1988, 10:00 A.M., ROOM SD-226.

MR. CHAIRMAN:

Today we are assembled to hear testimony on S.929, the "Volunteer Protection Act of 1987". This legislation would strongly encourage States to grant volunteers of tax exempt organizations immunity from personal liability for actions which they take in good faith and which are within the scope of their official duty. If such immunity from civil liability were not granted by individual states, social service block grants from the federal government would be reduced by one percent and these federal funds would be redistributed to states which have complied.

This bill is an attempt to address the problems caused by a decrease in volunteer participation due to an increased concern over exposure to personal liability. Our citizens depend upon volunteers for many vital services. Volunteers serve in fire and rescue departments, hospitals, town councils, rest homes, and youth sports programs, just to name a few. No one can question the immeasurable contribution of volunteers.

However, I believe that we must carefully examine the impact of legislation that will limit responsibility for negligent acts. Additionally, provisions which threaten states with loss of federal funds unless they take certain actions should be fully considered.

For these reasons, I look forward to today's testimony.

II

100TH CONGRESS
1ST SESSION

S. 929

Entitled the "Volunteer Protection Act of 1987".

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, MARCH 30), 1987

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

Entitled the "Volunteer Protection Act of 1987".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1987".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) within certain States, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they thereby put personal assets at risk in the event of liability actions against the organization they serve;

(2) as a result of this perception, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) the unpredictability of liability awards and doctrines has added to the high cost of liability insurance by making it difficult for insurers and self-insurers to project their liability with any degree of confidence and has adversely affected the ability of nonprofit organizations to obtain liability insurance coverage for volunteer directors and officers with respect to their personal capacities; and

(5) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in

connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.—It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reasonable reform of State laws to provide immunity from civil liability to volunteers serving with nonprofit organizations and governmental entities for actions undertaken in good faith on behalf of such organizations.

SEC. 3. NO PREEMPTION OF STATE TORT LAW.

Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

(a) IMMUNITY FOR VOLUNTEERS.—Except as provided in subsection (b), any volunteer of a nonprofit organization or governmental entity shall be immune from civil liability in any action brought in any court on the basis of any act or omission resulting in damage or injury to any person if—

(1) such individual was acting in good faith and within the scope of such individual's official functions and duties with the organization or entity; and

(2) such damage or injury was not caused by willful and wanton misconduct by such individual.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS WITH RESPECT TO ORGANIZATIONS.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to injury caused to any person.

SEC. 5. CERTIFICATION REQUIREMENT AND REDUCTION OF SOCIAL SERVICES BLOCK GRANT ALLOTMENTS.

(a) CERTIFICATION.—(1) Subject to paragraph (2), before the beginning of each fiscal year, commencing with fiscal year 1989, each State shall certify to the Secretary of Health and Human Services that it has enacted, adopted, or otherwise has in effect State law which substantially complies with section 4(a).

(2) In the case of a State whose legislature does not meet in regular session between the date of the enactment of this Act and before the beginning of fiscal year 1989, such State shall provide the certification referred to in paragraph (1) before the beginning of each fiscal year commencing after fiscal year 1989.

(b) REDUCTION OF ALLOTMENT.—If a State fails to provide certification as required under subsection (a), the

Secretary shall reduce by 1 percent the fiscal year allotment which would otherwise be made to such State to carry out the Social Services Block Grant Program under title XX of the Social Security Act.

(c) REALLOTMENT TO CERTIFYING STATES.—With respect to any reduction made under subsection (a), the Secretary shall allot such funds among States which provide certification referred to in subsection (a) in proportion to the amount otherwise allotted to such States.

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) the term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation, or any other thing of value in lieu of compensation, for such services (other than reimbursement for expenses actually incurred or honoraria not to exceed $300 per year for government service), and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer;

(2) the term "nonprofit organization" means any organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

(3) the term "damage or injury" includes physical, nonphysical, economic, and noneconomic damage; and

(4) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

○

Senator **Heflin**. We are pleased at this time to have the Honorable John Porter, Congressman from Illinois. Congressman Porter, we would be delighted to hear from you at this time.

STATEMENT OF HON. JOHN PORTER, MEMBER OF CONGRESS, STATE OF ILLINOIS

Mr. **Porter**. Mr. Chairman, thank you very much for holding this hearing this morning and for your willingness to look into this issue in some detail. Mr. Chairman, I have submitted to your staff my written testimony, and this morning we have provided also to you a list of cosponsors of the parallel bill in the House as well as a list of supporting organizations.

I particularly want to thank Senator John Melcher for his sponsorship in the Senate of S. 929 and his strong support for the concept of this legislation.

The House bill number is H.R. 911. That indicates the "emergency" nature of the problem, because, Mr. Chairman, volunteers are central to the fabric of our society and our way of life in America.

A 1985 Gallup study showed that 85 million Americans volunteered, giving 16.5 billion man-hours of service, valued at about $110 billion. No country on earth, as you said in your opening statement, depends on the volunteer efforts of its citizens more than ours. Whether it is for health care, services to senior citizens, schools, recreation, athletics, social services—all the various facets of America really do depend upon the volunteer efforts of Americans throughout our society.

Unfortunately, they are increasingly reluctant to come forward and offer their services because in this litigious society that we live in, they are increasingly fearful of being sued. They don't want to put their home or their farm or their assets at risk, and that is having a chilling effect upon volunteerism in America. And I think, Mr. Chairman, we have to do something about it.

The answer, I think, is to exempt volunteers from liability except in extreme circumstances, and thereby keep them coming forward.

This whole subject matter, Mr. Chairman, is as you and I both know as attorneys a State matter; it is a matter for State jurisdiction and not for direct Federal jurisdiction. But I think the Federal Government has a role in encouraging the States to act.

We did this with the 21 drinking age that has now, with a Federal prod, been adopted in 49 of the 50 States. And Mr. Chairman, it has brought down deaths of young people age 18 to 20 in America on our highways by 33 percent over the last 2 years as a result of raising that drinking age.

So what we have to do is encourage the States. I think we should encourage the States to adopt laws that provide that any volunteer working on behalf of a not-for-profit organization or a governmental entity would be immune from civil liability if they are acting in good faith and not in a willful and wanton manner, and if they are acting within the scope of their volunteer activity.

Under such laws, an organization would still retain the right to sue its own volunteers, and there would be no liability limitation on the organization itself; it would remain liable to any injured party.

The mechanism suggested to encourage the States is a 1-percent withhold on the Social Services Block Grant, a very gentle prod, and a redistribution of these moneys from those States that have not adopted laws protecting volunteers to those States that have—in other words, no net change in the amount involved but a carrot and stick approach, with a very modest 1 percent of the Social Service Block Grant being involved.

The purpose behind this legislation is one thing, and one thing only—that is, to keep volunteers volunteering in our country. The purpose is not to lay blame; it is not to solve the liability crisis; it is not to cut insurance costs. It is to do one thing only—to have volunteers feel confident that they can come forward and offer their services to the many organizations and governmental units that depend upon them without fear of ending up in court.

Some opponents might argue that volunteers shouldn't be afraid in America, but we have to deal with the perception out there across our society. Are they afraid? Well, the surveys show solid data that in fact, they are.

In 1986, the ASAE, American Society of Association Executives, surveyed their membership. They have 8,000 member organizations; 60 percent—60 percent, Mr. Chairman—say they have a recruiting problem.

In 1987, Peat Marwick surveyed CEO's of nonprofits—28 percent of those CEO's interviewed said that they had a crisis in getting volunteers to come forward. And now there has been a recent Gallup survey in November 1987; 20 percent of the CEO's of the associations said that they are losing volunteer participation due to liability fear; one in six volunteer board members have stopped serving because of that fear. Let's ask ourselves next, is that fear justified?

Well, one in five associations were sued in the last 5 years on a question of directors' and officers' liability; overall, 2 percent of volunteer board members have been sued as individuals. We find from the statistics that when you volunteer 7 years or more, 4 percent have been sued, and when you volunteer on more than four boards, 4 percent have been sued. So the more that you volunteer, the greater the chance that you will actually be sued.

You may say, "Well, that isn't a very large percent." But Mr. Chairman, the fact is that when people think about volunteering, they are worried they are going to be one of the 4 percent that is sued, it is human nature simply to fear that you are going to be the one that is going to be sued. And for that reason increasingly, people in America are simply not coming forward to offer their services.

You have a list in front of you, Mr. Chairman, of organizations supporting efforts to limit volunteer liability. It runs from the PTA to the Red Cross, from the AAUW to the Girl Scouts. Almost every major organization in our country dependent upon volunteers supports the concept of this legislation.

The House bill, H.R. 911, has 238 cosponsors, substantially more than half of the House membership. It is an issue, I think, whose time has come to be addressed and addressed forcefully by the Congress.

Here today with me are the National Coalition for Volunteer Protection, the Coordinating Committee, and they will have a representative, Gordon MacDougall, who will testify in the next panel. The Coordinating Committee includes the American Association of Museums, the American Society of Association Executives, Safeway Stores, which is a for-profit institution, but they do a great deal of volunteer food distribution, and they depend very much on volunteers, and they are a part of the Board. The same way with Xerox Corp., which has a volunteer year program whereby people in their company can go out and volunteer for a year in the private or public sector. They are interested in it, too. The Air Force Association; the National Council of Community Hospitals; the American Society of Mechanical Engineers; the Credit Union National Association—you can see how broad the concerns are for protecting volunteers.

All of these groups are volunteer-dependent or highly involved in promoting volunteerism.

Some groups that support the concept of the legislation are concerned about the trigger mechanism in S.929, the 1 percent. I might say, Mr. Chairman, I am not hooked on this trigger mechanism necessarily, but I am convinced that there is some prod necessary by the Federal Government to bring about State action. And I say that, Mr. Chairman, as a lawyer who practiced for 20 years and was a member of a State legislature, Illinois', for 6. I know that it tends to be that State legislatures are heavily populated by practicing attorneys, and sometimes we attorneys have some blinders on about some of the public policy issues that affect our own profession.

Many States, Mr. Chairman, have taken some action, but many are strange and inadequate. For example, Wyoming exempts only volunteer firefighters and hazardous waste cleanup volunteers. Rhode Island exempts sports volunteers only. Montana now covers all volunteers, but it used to cover just rodeo volunteers. Colorado covers youth groups and youth sports volunteers only. Some States cover just directors and officers; some cover just direct service volunteers; some cover both; some cover just 501(c)(3)s; some cover just other 501(c)s. And you have very much of a mix across the country. Some States cover absolutely nothing.

Should we be concerned, Mr. Chairman, about the injured party? Absolutely. That's partly why we are lawyers, because we care about injured parties and their protection.

I might say that the legislation does not contain a provision that I think you might consider in looking into this legislation in some detail. You may decide that, if you exempt all unpaid volunteers, there may arise by chance—and it would be very remote but it is possible—that an injured party would be injured by a volunteer of an association that has no substantial assets, and that you would then leave that party totally unprotected.

You might consider, Mr. Chairman, in looking at this legislation, some kind of a certification provision where States could certify that protection would be extended only to the volunteers of those associations or organizations that are financially responsible—and whether that is through insurance or through the quantity of their assets, or perhaps through a State pool to protect those who can't get insurance because they are new organizations—you might consider a State certification provision that would protect against the event that there would be that unusual circumstance where a volunteer would be the only person available with assets to protect the injured party.

I share that concern. I think that is something you should look into very carefully. Under S. 929, the volunteer would still be liable to the organization, as I said earlier. And most importantly, the organization would be the one that would be liable to the injured party. And, in almost every case, the injured party would look for protection to the organization and the organization's insurance, assuming that they carried it.

Even if you didn't provide for certification, however, you would be looking at a tradeoff, a public policy tradeoff. Is it important to the United States that volunteers keep coming forward, providing the billions of dollars of value and billions of man-hours of service to keep everything running in this society? I think it is tremendously important to America that those volunteers keep coming forward.

Again, Mr. Chairman, this bill is not to solve the liability crisis or address it in any way. It is not to lay blame. It is not to reduce insurance costs. Its only purpose is to have volunteers keep volunteering in our country and not stop coming forward because they are afraid they are going to end up being a defendant in a lawsuit and have to incur, at least, the cost of hiring an attorney and defending themselves in a court of law.

I commend the legislation to you. I thank you for hearing me and for your attention to this very, very important subject for our country.

[Statement of Congressman Porter follows:]

Testimony of the Honorable John E. Porter, M.C.

Before the

Senate Judiciary Subcommittee on Courts and Administrative Practices

in support of

S. 929/H.R. 911: The Volunteer Protection Act of 1987

Mr. Chairman, it is a pleasure to appear before you today in support of S. 929/H.R. 911, the Volunteer Protection Act of 1987. I am grateful to you for your decision to hold this hearing and I hope that after gathering the facts this Subcommittee will act favorably on the proposed legislation. I thought I could best contribute to this hearing by explaining the origin, background and intent of the Volunteer Protection Act.

I came upon the issue of volunteer liability exposure in 1986 when I was investigating general liability problems that were facing health care providers. I learned that volunteer-dependent organizations were experiencing problems recruiting volunteers -- that fear of being sued and of having to hire an attorney and perhaps placing one's home, farm and assets at risk was having a chilling effect on voluntarism in America.

My attention was first drawn to the problem when a proposed battered women's shelter in Evanston, Illinois -- near my district -- could not find liability coverage. Without coverage, it was impossible to convince individuals to serve on the shelter's board. As a consequence, the shelter was never started. Through subsequent conversations with direct service volunteers and leaders of nonprofits, I learned that obtaining liability coverage for new nonprofit organizations and their volunteers had become increasingly difficult. What I also learned, however, was that this situation was discouraging voluntarism. Media attention to the liability insurance "crisis" coupled with the stories of large and complicated lawsuits involving nonprofits, charitables, and other community-oriented organizations, were scaring potential volunteers into staying home.

Subsequently, I got in touch with the American Society of Association Executives (ASAE), an organization representing some 8,000 national, state and local voluntary associations. As part of their 1986 annual survey, ASAE included a question on volunteer liability problems. 60% of the approximately 2,000 respondents said that, yes, fear of liability exposure was damaging their efforts at volunteer recruitment.

In further researching this issue during 1986, I discovered that approximately six states had passed statutes addressing volunteer liability. A Connecticut law, I learned, provided civil liability immunity to uncompensated trustees or directors of nonprofit organizations, when their actions were in good faith and their behavior was neither willful nor wanton.

I also discovered a Delaware law extending limited liability protection only to nonprofit sports volunteers. In a different vein was a Maryland law protecting the agents of charitable organizations from liability for damages as long as the organization carried suitable insurance.

Working from these and other state laws, I drafted H.R. 5196, the Volunteer Protection Act of 1986, which I introduced near the end of the 99th Congress. I subsequently re-introduced this bill in the 100th Congress as H.R. 911, and I requested that bill number because I do think this situation is a national emergency. Evidence of this urgency is seen in the wide variety of volunteer liability laws enacted by the states over the past two years. Over 40 states -- and frankly, Mr. Chairman, I have trouble keeping up with all the state laws -- have now taken action of some kind or another in an effort to address the problem of volunteer liability exposure.

Mr. Chairman, I should say that I do not know who is responsible for the current liability insurance "crisis." When I look at the liability issue, I see doctors and manufacturers blaming lawyers, I see lawyers blaming insurers and I see the insurers blaming the manufacturers, the doctors and the lawyers. It seems to me that the net result of this type of collective finger-pointing is that very little has been accomplished in terms of finding real solutions.

In this context, the Volunteer Protection Act does not presume to pass judgement on who is at fault, but rather it is a modest and balanced effort to bolster state initiatives intended to encourage voluntarism through providing limited insulation of the volunteer, as an individual, from liability exposure. Its purpose, Mr. Chairman, is not to solve the liability crisis or assess blame for it, but solely to encourage Americans to keep volunteering and to assure them that they can do so without inordinate fear of ending up in court.

Are volunteers really afraid of being sued? Since 1986, a significant body of data on the existence and extent of this problem has been compiled from several sources. A 1986 survey by the National Association of Corporate Directors (NACD) of 2,800 corporate directors found that only 36% would be willing to serve on a nonprofit board that did not carry Directors and Officers (D&O) insurance.

In 1987, evidence continued to surface pointing up the seriousness of the volunteer liability problem. Peat Marwick & Company commissioned Opinion Research Corporation to conduct a survey of directors and officers of both for-profit and nonprofit corporations. The results of that survey were best summarized by its title, "A Crisis in the Making." 28% of the directors of nonprofits stated that the situation had reached the crisis stage. (Incidentally, the level of concern among the CEOs of for-profit organizations was even higher -- with about half these executives describing the situation as a crisis.)

As part of the Peat, Marwick survey, 628 directors of museums were also surveyed. Edward Able of the American Association of Museums will discuss this survey in greater depth later in this hearing, but let me mention that 4% of these executives indicated that members of their board had been sued in the past, 4% suffered the resignation of board members due to the fear of being sued, and 7% stated that a prospective board member had refused to serve because of this same fear.

Mr. Chairman, the most comprehensive survey of the volunteer liability problem was conducted at the end of 1987 and released in January of this year. This study was underwritten by the Gannett Foundation -- a nonprofit, non-political foundation which takes no position on volunteer protection legislation or any other policy issue -- and organized by the ASAE foundation. The study was conducted by the Gallup organization and it surveyed two separate groups -- the chief executives of nonprofit associations (501(c)(3)s, (4)s and (6)s), as well as their volunteer board members.

Mr. Chairman, this study clearly indicates the need for volunteer protection legislation. Twenty percent of the association executives reported adverse effects on voluntarism in their organizations as a result of liability problems. This included 18% who cited the fact that a potential volunteer leader had withheld services due to concern over liability, 8% who had an active volunteer leader resign, and 6% who reported a decline in the overall number of volunteers participating in the organization's leadership due to liability fears.

In addition, five percent of this group of 265 executives said that their association had been sued within the past five years on a question of directors and officers liability.

Results of the survey of volunteer board members were even more telling. Half this group knew fellow citizens who had refused to serve as volunteer board members due to liability fears. Sixteen percent, one-in-six, reported that they themselves had withheld their services to a nonprofit organization due to concern over liability exposure. Overall, 2% reported having been sued as a volunteer for a nonprofit corporation. Incidentally, among those who had served as a volunteer board member for 7 or more years, the percentage reporting having been sued as an individual rose to 4%.

Mr. Chairman, these studies quantify and illuminate what I call a "quiet crisis" in volunteer liability. I will not cite anecdotes of actual lawsuits involving nonprofits and their volunteers, but I am personally aware of a number of such cases. The PTA, for example, has been sued in various capacities some 30 times since 1983. I would recommend that members of this Subcommittee read closely the testimonies that will be submitted for the record from the various affected groups. I also recommend that you contact your local Girl Scout troops, Boy's Clubs, PTAs and other nonprofits to hear first-hand about this problem.

It may seem to some that a 2% incidence of volunteers actually being sued, or a 7% resignation rate does not constitute a crisis, but I disagree. Remember that in 1985, some 85 million Americans were volunteering in some capacity or another, providing 16.5 billion hours of service to the nation valued at in excess of $110 billion. The fear among volunteers is easy to understand -- it is human nature to fear falling into that small percentage of volunteers who are actually sued. Tragically, in many liability actions against nonprofits, the individual volunteer is the only named party without insurance or assets. Even if the volunteer is eventually cleared, legal expenses can become monstrous. The current fiscal crisis, I might add, has strained federal support for many of the types of services volunteers provide. I strongly feel that further dimunition of the contribution volunteers make to our society is unacceptable. Let me stress once again, Mr. Chairman, that the sole purpose of H.R. 911/S. 929 is to ensure that volunteers keep coming forward to offer their services.

Mr. Chairman, the Volunteer Protection Act has served as a rallying vehicle for the various non-profit groups concerned by the liability crisis. The bill, in a sense, sets up a model statute for the states to follow in drafting their own volunteer protection laws. By intention, it is comprehensive and simple. Under the model statute, any volunteer on behalf of any nonprofit organization or governmental entity would be immune from civil liability for any court action arising out of any act or omission.

But this immunity would apply only if the individual were acting in good faith and within the scope of his or her duties to the organization. Willful or wanton behavior by the volunteer would not be protected, and the nonprofit organization itself would retain the right to take legal action against one of its own volunteers. Nothing in the bill proposes any limitation on the immunity of the organization itself. Injured parties who currently gain most of their recoveries from the organization and not the individual volunteer would continue to be able to hold these organizations fully liable.

There is a trade-off, a balance, involved in such legislation. Parties seeking recoveries against an individual volunteer would be required instead to look only to the organization. That trade-off is justified as a matter of public policy because of the extreme importance of voluntarism in American society. It is, in my judgement, a relatively small price to pay for insuring that people keep volunteering all across our country -- in our schools, hospitals and social service institutions, to coach our Little League teams and run the thrift shop at the Salvation Army.

H.R. 911/S. 929 defines nonprofit organization to include any organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954. This includes some very well-known types of nonprofits such as 501(c)(3)s (charitable, religious, educational or scientific organizations), 501(c)(4)s (civic leagues and social welfare organizations), and 501(c)(6)s (business leagues).

Section 501(c), however, also includes labor unions, agricultural societies, social and recreational clubs, fraternal societies, voluntary employees' associations, credit unions, veterans organizations, armed forces associations, and a number of other groups. In addition to 501(c)s, the Volunteer Protection Act also covers governmental entities.

The act defines "volunteer" as any individual who performs services for a 501(c) or a governmental entity and who receives no reimbursement for those services other than for expenses incurred. In the case of a volunteer on behalf of a governmental entity, the definition allows them to receive up to $300 per year in honoraria. This provision is intended to extend volunteer protection to members of town councils and other bodies of government who might receive a symbolic salary of a few dollars a week but who, for all practical purposes, are volunteers. The definition of volunteer includes not only directors, officers and trustees (advisory volunteers), but also direct service volunteers (DSVs).

Since introduction of the act, I should add, some groups have suggested changes to these two definitions. It has been suggested that someone who receives small inducements to service (e.g. free meals provided to volunteers in nonprofit hospitals) should still be considered a volunteer. Also, the volunteer head of a condominium management association wrote to me to point out that these associations are incorporated under Internal Revenue Code section 528 rather than as a homeowner's associations under 501(c)(4).

Alternatively, it has been suggested to me that the retirement and insurance funds included under section 501(c) should not be candidates for this coverage.

By including all 501(c)s and governmental entitites, and by including both direct service volunteers as well as directors, officers and trustees, the Volunteer Protection Act proposes broader coverage than that provided in some states. Many state laws, unfortunately, limit coverage to certains types of 501(c)s (typically (3)s, (4)s, and (6)s). Other states limit the immunity to Directors and Officers (D&Os) of nonprofits, rather than extend coverage to direct service volunteers as well. In some cases, the specifics of a state law seem to reflect the reaction of the legislature to a particular case or problem that may have been brought to their attention.

The Volunteer Protection Act encourages the states to pass a law which corresponds to the model statute by attaching certain conditions to their receipt of federal funds. In this sense, it is similar in method to the enactment of a nationwide drinking age of 21 years. In that law, as you will recall, the Congress threatened to withhold federal highway funds from any state which did not raise its drinking age to 21. As a result of that statute, 49 of the 50 states have now changed their minimum age for alcohol consumption to 21. Recent statistics show that highway deaths among young persons age 18 to 21 have dropped 33% after these changes in state law were induced by the federal statute.

The Volunteer Protection Act attaches conditions to the state's receipt of Social Services Block Grant funds (SSBGs). There would be a 1% withholding of these funds to any state which did not act to protect its volunteers.

The SSBG program is an entitlement authorized under Title XX of the Social Security Act and currently funded at $2.7 billion. As currently written, the Volunteer Protection Act would require that, beginning in Fiscal Year 1989, each state must certify to the Secretary of Health & Human Services that it has in place a statute which substantially complies with the model statute. In the event that a state failed to provide this certification, the Secretary would be authorized to reduce that state's allotment of SSBG funds by the 1%. This would amount to approximately $3 million in a large state such as California, or about $400,000 in a small state like New Hampshire. In my opinion, it is a very modest amount, but a sufficient sum to motivate the states to act. The act further stipulates that any funds withheld from any state for failure to extend volunteer protection be reallocated proportionally to the states which have complied. In this way, the "trigger" for the volunteer protection act combines both a mild carrot and a mild stick to urge state action.

Mr. Chairman, there was nothing sacred about my choice of the SSBG program as a trigger for the bill. I was looking for a block grant program, of course, because those funds go directly to state capitols and hence the state government could be held directly accountable for its efforts at volunteer protection. It has always been my assumption that this trigger would provide the necessary nudge for the states to come into compliance thereby obviating the need for any withholdings, but I do share the concern of some social services groups that volunteer protection not be achieved at the cost of vital local programs.

Because a substantial amount of time has passed since introduction of H.R.911/S.929, I would suggest changing the trigger to Fiscal Year 1990. In addition, I would not oppose shifting the trigger to a pure "carrot," by rewarding each state that comes into compliance with a 1% increase in SSBG allotment. Admittedly, such a change could cost $27 million, but the trend in SSBG funding has been in this direction already, and such a modest increase seems well worth it to me and could be accomodated within the budget process. I might add, as we all know, that the SSBG program suffered large reductions in the early 1980s.

Mr. Chairman, the issue of volunteer protection raises some questions about the relationship of volunteer liability exposure to liability insurance, and the effect that volunteer protection may have on the volunteer's obligation to behave responsibly. These subjects are each worthy of discussion.

The Volunteer Protection Act, it should first be pointed out, does not obviate the need for an organization to carry general liability insurance. The organization remains fully liable. Nor will it solve all the problems related to securing such coverage at a reasonable cost since the purpose of the legislation is not to lower insurance costs or increase availability, but to keep volunteers volunteering. This act will not eliminate problems with market fluctuations in insurance costs related to the insurance profit cycle. Incidentally, I might add that some states and nonprofit groups are beginning to look at volunteer and general liability risk-pools as part of the solution to insurance availability for nonprofits.

Part of the logic behind encouraging each state to enact similar or identical limitations on volunteer liability, however, is related to insurance availability and cost. With greater national uniformity will eventually come greater predictability in these costs. In 1986, at my request, the underwriting department of a major U.S. insurer analyzed the Volunteer Protection Act and concluded that, "[p]roviding this immunity should help to eliminate frivolous suits. Having to prove willful and wanton misconduct should help stabilize the coverage and liability situation."

Would enactment of the Volunteer Protection Act eliminate the need to carry Directors and Officers (D&O) insurance, or insurance for direct service volunteers (DSVs)? In states where volunteer protection statutes are in effect, the general consensus seems to be that -- like many other areas of insurance -- the legislation must first be tested in the courts. Over time, however, I feel confident in stating that volunteer protection statutes should substantially reduce the cost of D&O coverage. But again, that would really be a tangential benefit. Even if insurance costs were not affected, the legislation is needed to encourage voluntarism.

Would enactment of the Volunteer Protection Act create incentives for nonprofits to drop their insurance coverage or to relax their responsibility to oversee their volunteers? I think not. While some may argue that changing liability standards for volunteers (i.e. from "simple negligence" to "willful and wanton") will lead to greater negligent behavior by volunteers, I believe that the Volunteer Protection Act contains two important provisions which mitigate against such an occurence. The first is that the organization itself remains fully liable in any civil liability action. The second is that the organization retains the right to sue one of its own volunteers. A structure is thereby preserved under which any person injured by the negligence of a volunteer can still seek recovery from the organization and thereby retain pressure on the organization to ensure prudent behavior by its volunteers. The volunteer, for his or her part, remains responsible to the organization for which they serve.

In this regard, Mr. Chairman, I think it is important that all nonprofit organizations and governmental entities become more deeply involved in risk-management activities which will serve both to lower incidences of negligent conduct and ease insurance costs. Risk-management involves everything from careful inspection and maintenence of facilities and equipment to structured training, screening and oversight of all volunteers and volunteer coordinators. At the advisory volunteer level, risk-management includes such things as defining the responsibilities of volunteer committees and setting rules on who may speak for an organization. In my opinion, such programs should be encouraged by the states in conjunction with the extension of limited volunteer liability immunity. The Volunteer Protection Act should clarify that states be allowed to require nonprofits to take part in risk-management programs as a condition of extending volunteer protection.

Mr. Chairman, since the introduction of the Volunteer Protection Act, a number of other issues related to limited volunteer protection have been brought to my attention and I would like to share them with the Subcommittee. Many states have exceptions to their protection statutes for incidents involving motor vehicles or for licensed professionals (such as doctors and lawyers) providing volunteer services. The motor vehicle exception, I might add, is especially important in states with compulsory no-fault auto insurance programs. The Committee might want to consider allowing states to include such exceptions.

Similarly, volunteer protection should probably not be extended to any nonprofit group which also has charitable immunity or to any governmental entity with sovereign immunity. But it is my understanding that there are few of these immunities remaining in any of our jurisdictions. In any case, the act should clarify that exceptions to such extensions are permissible.

Mr. Chairman, the advancement of volunteer protection statutes is a goal shared by literally hundreds of nonprofit and volunteer-dependent organizations. In the House, I have collected 238 cosponsors on H.R. 911 -- 111 Democrats and 127 Republicans. Almost all of these supporters have signed on as a result of local citizens who contacted them, explained the severity of the problem and requested their support. This is not a "Beltway" issue, Mr. Chairman, it is an issue of the heartland. Volunteers are central to the fabric of our society, to our way of life, and this legislation is a modest attempt to bolster the contribution they make.

Thank you, Mr. Chairman, for your consideration. I would be happy to answer any questions which you may have.

Senator HEFLIN. Thank you, Mr. Porter.

Senator Thurmond, do you have any questions of this witness?

Senator THURMOND. Congressman Porter, we are glad to have you with us.

Mr. PORTER. Thank you, Senator.

Senator THURMOND. Volunteers are essential to the fabric of our society, and their contributions to this Nation are extensive. You note in your prepared statement that there is great disparity among the States regarding the amount of the immunity which these persons are afforded, I believe; is that correct?

Mr. PORTER. Yes, sir, it certainly is.

Senator THURMOND. Would you explain the extent to which you see this legislation improving the volunteers' contributions to society?

Mr. PORTER. Again, I think what is important is that volunteers, Senator Thurmond, not be deterred from coming forward to offer their services, whether it is to work in the Salvation Army thrift shop, or to be a Little League coach, or to work in a hospital or to be a teacher's aide, or whatever it may be. We do not want them to be worried that they are going to be sued and have them stay home for exactly that reason, and that, of course, is what we see happening.

So this legislation, by encouraging the States to adopt laws to provide protection to volunteers—and my own State of Illinois, I might proudly say, since we introduced the legislation has adopted a comprehensive statutory provision, providing across-the-board protection to directors and officers and direct service volunteers of 501(c)(3)'s all across Illinois society. We hope each of the States of the Union will take action—not to protect just a few, or not just to protect those that are of a certain 501(c) category, but to protect all volunteers and keep them coming forward.

Senator THURMOND. What Illinois has done, other States could do, too, if they wanted to, couldn't they?

Mr. PORTER. Absolutely.

Senator THURMOND. If they don't want to do it, though, you are going to force them to do it by causing them to lose pay.

Mr. PORTER. Well, I'm not going to force them to do it, Senator. There is a 1 percent withhold of the Social Services Block Grant. That would amount at the top end to about $3 million in a State as large as California; it would amount at the bottom end to about $400,000 in a State as small as New Hampshire.

So, inbetween that range there is a gentle prod. The States get 99 percent of the money unaffected; 1 percent says, "gentlemen down there in the State Capitol, shouldn't you look into this matter, shouldn't you make certain that in your State, you are really protecting volunteers."

I think it is a very, very gentle suggestion, almost, that they take State action and address the problem.

Senator **Thurmond**. Volunteers are so important and render such a great service, and any way we can help them, I'd like to do it. But I am wondering about coercion on the States to do something they may not want to do, and under the Constitution, do not have to do, because the States are independent, and the only power the Federal Government has is what is given to it by the States, and they haven't given this power, have they?

Mr. **Porter**. Well, yes, they have, as a matter of fact, Senator Thurmond. I mentioned the Federal action of 1984 when we—with a much heavier hand, I might say—when we suggested to the States very strongly that it is in our national interest, which it obviously is, to raise the drinking age in every State to 21. We had a very heavy withhold of highway trust funds from the States that did not do that, and no redistribution, I might add, to the States that did. So it was a much more heavy-handed attempt than this one. Of the 50 States, 49 have raised the drinking age to 21; deaths of young people on our highways have dropped by 33 percent since that time. And that law has been upheld, by the way, by the courts as a constitutional exercise of Federal power. So I don't see a constitutional problem with it. It is very clear that we have the power to do it.

I do suggest that we have to exercise that power very, very carefully, and only in very pressing circumstances, but I think this may be such a circumstance. And that's why I have suggested this very gentle nudge, a constitutional nudge, a suggestion, almost, to the States that they act.

If you find a problem—as many do, I might say—with the fact that there is a stick in there, that we withhold one percent, if that is a problem for you and for other members of the Senate, maybe you should consider only offering the carrot part, an increase of 1 percent with no decrease. The maximum cost of that would be about $27 million. I think it would be $27 million very, very well spent to encourage volunteerism, and it would not provide a penalty for those who did not comply.

Senator **Thurmond**. Would that be constitutional? You have got to treat all the States alike. And if you withheld some funds from one, or some States that didn't go along, or gave additional bonuses to those that did, you're not treating them alike. That raises constitutional questions.

And on this matter about the drinking, I voted against that for the very reason that I felt it should have been a constitutional amendment. Now, you can do that. You can plunge the Federal Government in any field by offering a constitutional amendment. But I'm not too sure I agree with the statutory method of doing it, because passing the statute doesn't necessarily bringmatters to the Federal level; they ought to be done in the proper way.

Mr. **Porter**. Well, sir, we treat States differently under Federal standards all the time. States that meet certain requirements get more money. States that have greater needs get more money. We do that in a wide variety of Federal programs.

Now, I can understand perhaps your reluctance, because I too think we have to be very careful about this, to provide prods to State legislative action. But clearly, it is not a constitutional problem. It is simply a problem of policy and whether we wish to do it or not. It is a judgment that we have to make. It is a legislative judgment. The courts are clear that there is no constitutional problem with that, and that is why the 21-year drinking age legislation was upheld in the courts.

Senator **Thurmond**. Well, the Federal Government has gone into many fields where it didn't have constitutional authority. Back in the 1940's, the Supreme Court plunged the Federal Government into the field of insurance. Congress passed a law and took it right out. Even the Supreme Court didn't adhere to the Constitution. And when Truman was President, he seized the steel mills, and the court struck it down; he didn't have constitutional authority.

All down through history, there have been actions taken. But if you are a strict constructionist of the Constitution, then you take a different view, and I am a strict constructionist.

In other words, we can go into any field by changing the Constitution, but I think we ought to adhere to it until it is changed. That's the only thing that disturbs me.

I am solidly in favor of what you want to do to help volunteerism; that is extremely important. But there is a question in my mind as to whether you ought to punish the States and say if you don't do so-and-so, you're not going to get any money, or we're going to take away some of your money. I don't feel that is the proper course to take.

Mr. **Porter**. I suggest, Senator, that you look at the other side of it, then, and simply say, "let's reward those States that are doing the right thing and not punish those that aren't."

Senator **Thurmond**. Well, then you will be punishing States where you reward some and don't reward others.

Mr. **Porter**. Well, we encourage lots of State actions through public policy all the time.

Senator **Thurmond**. I have heard this—I have been here 34 years, and I have heard the arguments made and so forth. I still believe we ought to follow the Constitution. A lot of things are noble and they are worthy, but they should be done at the level of Government provided in the Constitution. I'm not against them, but they just ought to be done at the level of Government provided in the Constitution.

Mr. **Porter**. I can see I'm not going to convince you, Senator Thurmond.

Senator **Thurmond**. Thank you very much for coming.

Senator **Heflin**. I didn't want to ask any questions now; I was trying to get to Senator Melcher, because I know he is busy. But you may be the only lawyer who testifies today, so there are some questions, and I will ask you.

I am a little concerned on why you picked the social service block grant program in effect to be the stick to hit the States over the head with. In other words, you would have one percent that you would decrease if they failed to adopt it each year, and that includes child day care, protection for the elderly, home care for the elderly, transportation for the elderly, as well as staff training.

Now, why are you picking this particular one out as opposed to something like highways or something else? I just wonder why?

Mr. **PORTER**. Because it is the one most directly affected by volunteerism, and a 1-percent withhold with 99 percent preserved is very gentle. But one would also think that the volunteer organizations that are concerned with these subject matter in the State would, facing a loss, if that were to be the form of legislation, want to see their State legislatures adopt protection for their volunteers, both from the sense of having those volunteers come forward, but also from the sense of losing money if they didn't.

So it is gentle in one sense; it also is particular, targeted, in another sense. And again, I am not hooked on Social Service Block Grant as opposed to anything else. I simply think that it is the one that is the most likely to result in positive State action to protect volunteers.

Senator **HEFLIN**. Now, let me ask you this. It may well be that this would have to get some expert testimony as to how much it is, but generally, there are widespread homeowners' insurance policies in the United States. Included within the homeowners' policies, there is comprehensive liability insurance. Is there anything that you know that prevents that comprehensive liability insurance from not covering volunteers and their actions?

Mr. **PORTER**. Well, I think you'd have to ask an insurance expert rather than me, Mr. Chairman. But I would guess that most homeowners' policies do not cover volunteer activity off of the homeowner's premises. Beyond that, an awful lot of volunteers in America aren't homeowners anyway, and don't carry that kind of insurance. Even if they did, I don't think it covers that, though.

Senator **HEFLIN**. Well, generally, homeowners is a broad, comprehensive liability; it is widespread.

Mr. **PORTER**. For acts or omissions occurring on the premises that are insured.

Senator **HEFLIN**. Oh, no; oh, no. You are not familiar with this.

Mr. **PORTER**. Well, I disclaim being familiar. You are right—I am not.

Senator **HEFLIN**. Well, basically, homeowners' insurance and comprehensive liability cover all liability that a person comes under unless they are excepted, and there are exceptions that are given. It covers you in many, many phases and fields.

Mr. **PORTER**. Well, you would have to get testimony on that. I don't know why it would——

Senator **HEFLIN**. And then, of course, you have a similar type of homeowners' insurance that is tenant type insurance and things else, depending on its coverage, but the idea was when they went from the regular insurance policy of a number of years ago to the homeowners' was to provide much additional coverage, which they did, and they sold it, and it is a great advancement in the insurance industry. One aspect of it is comprehensive liability insurance, and it is something I think you would have to look at.

Mr. **Porter**. I have been slipped a note, Mr. Chairman, by one of the experts here, and they tell me that some Homeowners policies cover these things and some don't. And then, of course, some people carry Homeowners insurance, and a lot of people don't. So I guess it is something to look into carefully, but I don't think that it is necessarily the solution to the problem.

Senator **Heflin**. Basically, from a tort basis, this would be changing the legal theory of a concept of assumed duty.

Mr. **Porter**. It would be changing it somewhat. It would be changing it from simple negligence to willful and wanton misconduct; changing the standard of liability for the volunteer—lessening their responsibility.

They would still be liable if they acted outside the scope of their volunteer activity or acted in a willful and wanton manner within it. But it would change the standard; that's correct.

Senator **Heflin**. Well, basically, under the common law, in order for an instance to be actionable for civil liability, first you had to have a duty, and second, you had a breach of duty, and third, you had an injury. Those are the three elements basically involved in negligence.

Unless there was a duty that was owed, therefore you were not subject to suit. There came along a concept under the common law which developed an assumed duty, when someone assumed a duty that he did not have, and as a result of it, if he breached that assumed duty with negligence, and there was an injury, then he could be held liable.

I assume that this is what this particular bill is directed towards, is where a person assumes a duty. Is that in effect the purpose of the bill?

Mr. **Porter**. Yes. It is in tort. It affects tort liability. And yes, you are exactly right, Mr. Chairman, that's what it is aimed at.

Senator **Heflin**. Thank you, sir. We appreciate your testimony.

Mr. **Porter**. Thank you, Mr. Chairman.

Senator **Heflin**. We call on Senator Melcher now to come forward.

We are delighted to have you, Senator.

STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator **Melcher**. Thank you very much, Mr. Chairman and Senator Thurmond.

You have heard from Congressman Porter, a lawyer, and I am sure you are going to hear from a lot of other lawyers on today's testimony. But I want to tell you that ordinarily, I wouldn't be in this type of legislation, and I wouldn't be appearing before this committee, strongly advocating the type of legislation that S. 929 is, the Volunteer Protection Act.

But I can't ignore reality, and I want to tell you how I first became aware of this particular problem. A couple of years ago, a son of ours was practicing law in Havre, Montana, practicing in a law firm that does primarily trial work, as a trial attorney. My son, Bob, told me that he was going to resign from the board that handles the low-income programs for his small community. Havre is about 10,000 folks. They have, as most States do, a type of organization that handles low-income programs.

And I said, "Why do you want to resign from that? That is something that is necessary in the community. Why do you want to resign from that board?"

He said, "Because they don't have any liability insurance, and I might become involved and be liable as a board member." So he resigned.

Now, to the extent that he could contribute as a volunteer on that board, it was something that he was doing for the community. His reason for withdrawing, however remote these lawsuits are, cannot be questioned as a valid reason; I have to admit it. It is a valid reason, even though there aren't very many suits.

You are going to hear testimony today from one witness that we are familiar with who has been sued. And I am going to speak into the record here the gist of a letter that I received from another attorney from Big Timber, MO. His name is Bill Frazier.

Big Timber, MO, has about 700 folks, or maybe 1,000 now, out in the beautiful part of Montana; is it just a privilege to live there.

Bill Frazier wrote and said he served on the Sweet Grass County Memorial Hospital. That's their little hospital in Big Timber. It is a question there of retaining people on the board as volunteers for the hospital. Can the hospital carry insurance? This little hospital can carry insurance to the extent that they want to cut down on something else.

The low-income community group that my son served on had no money for insurance, none at all. This little hospital in Big Timber can have some insurance for their board members if they want to cut back on some of the other things they have. It is a very small hospital.

Bill Frazier also served on the Big Brothers and Big Sisters Board in the neighboring town which is a little bit larger, Livingston, MO. And he spoke this way of what happened there. Now, Livingston, MO, is about 6,000 or 7,000 people, with a Big Brothers and Big Sisters organization there.

> As a result of a 1986 injury and subsequent lawsuit involving a child who was not even a member or participant in the organization, it has now become impossible for us to obtain insurance coverage.
>
> That case has long since been settled, but members were fearful of being sued, there was the threat of lawsuit, and a friend of the injured child has subsequently threatened to sue several, if not all, of the members of this Board of Directors. This has created a tremendous amount of stress, with the result that most of the original members of the Board of Directors have either resigned or notified the Board that they will not serve for any additionalterms of office.

I call your attention to the following quotation, which is a passage from a letter of resignation from one of our members:

> Who will be the officers? Because no one has come forward or been enticed to volunteer, Susan is still shouldering the burden—and trauma—involved in being ultimately responsible. She has given unselfishly of her time and talents at a time in her life when it was inconvenient for her to do so. But it just does on and on. As we have found out this past 18 months, the officers and members of the Board must be much more involved in a supervisory capacity than in days gone by. It is no small time commitment.

In other words, they had a hard time getting board members. They had a hard time getting people to serve. The few that they could get were under greater stress, because what resulted in the community was there has been a lawsuit, long settled, but it hangs over afterward.

Senator Thurmond mentioned volunteerism as part of the fabric of our country. It certainly is. It is very much what makes America tick. And without volunteerism, we are not going to have the same type of country, we are not going to have the same type of communities, we are not going to have the same type of interaction between people, trying to make their community a better place to live and trying to make it a successful place to live.

So I very much want to see the bill pass. I want to say to you, Senator Thurmond, that I have a tendency to agree with you on not badgering or forcing States to do something in their own State, in their own statutes, by either withholding money from the Federal Treasury, or this other custom that is not unique of rewarding States. Of the two, I would say rewarding the States to do something that Congress wants them to do is probably the most acceptable.

I don't know what to do about that particular point, and I hope the subcommittee does move the bill, and I hope in your wisdom you find a solution that is equitable and constitutional, in the way you and I interpret the Constitution, Senator Thurmond, on this particular point.

Certainly, it is a matter that Congress should address. It is a point that all States should have a type of protection for volunteers that makes volunteerism remain as it always has been in our society up until the past several years, something we did because we felt there was a need of it, something we did as a part of what I would call the broad range of public service, to help people, to help the community.

That is the sum and substance of my testimony.

[Senator Melcher submitted the following statement for the record:]

TESTIMONY OF

SENATOR JOHN MELCHER

BEFORE THE

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

MAY 20, 1988

CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, THANK YOU FOR HOLDING THIS HEARING TODAY ON S. 929, THE VOLUNTEER PROTECTION ACT. I HAVE HEARD FROM MANY GROUPS AND INDIVIDUALS FROM AROUND THE COUNTRY AND, AT THE END OF MY TESTIMONY, I WISH TO SUBMIT LETTERS FROM THESE VOLUNTEERS FOR THE RECORD.

THE REASON I BECAME INVOLVED WITH THIS LEGISLATION WAS BECAUSE OF MY SON, BOB, WHO LIVES IN HAVRE, MONTANA. BOB IS A TRIAL LAWYER. A COUPLE OF YEARS AGO, HE TOLD ME HE HAD RESIGNED FROM THE BOARD OF THE AGENCY THAT HANDLES PROGRAMS FOR LOW-INCOME PEOPLE IN HAVRE. HE SAID THE GROUP WAS NO LONGER ABLE TO AFFORD LIABILITY INSURANCE AND HE FEARD MEMBERS OF THE BOARD MIGHT GET SUED PERSONALLY. I BELIEVE MY SON AND OTHERS SHOULD BE ABLE TO SERVE ON THAT BOARD. I WANT THEM TO HELP PEOPLE. AND I WANT THE PEOPLE OF MONTANA AND ALL OTHER STATES TO FEEL FREE TO VOLUNTEER WITHOUT THE THREAT OF BEING SUED.

OUR COUNTRY DEPENDS ON VOLUNTEERS TO MAKE THINGS WORK. YET VOLUNTEERS ARE GETTING HARDER TO FIND BECAUSE THEY ARE INCREASINGLY WARY OF BEING EXPOSED TO LAWSUITS AND POSSIBLY LOSING THEIR HOMES OR THEIR FARMS.

HERE'S HOW ONE VOLUNTEER, WILLIAM FRAZIER OF BIG TIMBER, MONTANA, DESCRIBES THE PROBLEM:

"I AM A MEMBER OF THE BOARD OF DIRECTORS OF SEVERAL CHARITABLE NON-PROFIT, TAX-EXEMPT ORGANIZATIONS. THE ONES MOST CONCERNED WITH THE PASSAGE OF THE VOLUNTEER PROTECTION ACT ARE THE BIG BROTHERS AND SISTERS ORGANIZATION OF LIVINGSTON, MONTANA, AND THE SWEET GRASS COMMUNITY HOSPITAL OF BIG TIMBER, MONTANA.

"ALTHOUGH THE SWEET GRASS COMMUNITY HOSPITAL HAS NEVER BEEN SUED, OR HAD A CLAIM FILED AGAINST IT, ASSETS MUST BE DIVERTED TO PAY FOR DIRECTORS LIABILITY COVERAGE. A MORE ACUTE PROBLEM FACES THE BIG BROTHERS AND SISTERS OF LIVINGSTON. AS A RESULT OF A 1986 INJURY AND SUBSEQUENT LAWSUIT INVOLVING A CHILD WHO WAS NOT EVEN A MEMBER OR PARTICIPANT IN THE ORGANIZATION, IT HAS NOW BECOME IMPOSSIBLE FOR US TO OBTAIN INSURANCE COVERAGE.

"THAT CASE HAS LONG SINCE BEEN SETTLED, BUT MEMBERS WERE FEARFUL OF BEING SUED, THERE WAS THE THREAT OF LAWSUIT, AND A FRIEND OF THE INJURED CHILD HAS SUBSEQUENTLY THREATENED TO SUE SEVERAL, IF NOT ALL, OF THE MEMBERS OF THIS BOARD OF DIRECTORS. THIS HAS CREATED A TREMENDOUS AMOUNT OF STRESS WITH THE RESULT THAT MOST OF THE ORIGINAL MEMBERS OF THE BOARD OF DIRECTORS HAVE EITHER RESIGNED OR NOTIFIED THE BOARD THAT THEY WILL NOT SERVE FOR ANY ADDITIONAL TERMS OF OFFICE. AN OUTGROWTH OF THIS SAME PROBLEM IS OUR DIFFICULTY IN OBTAINING OFFICERS TO BEAR RESPONSIBILITY IN THE ORGANIZATION. THEY FEAR LAWSUIT AND THEY FEAR THREAT OF LAWSUIT.

"THIS IS NOT A PROBLEM WHICH IS UNIQUE TO THIS PARTICULAR ORGANIZATION. IT HAPPENS TO OTHERS, AND IT IS HAPPENING MORE FREQUENTLY. IT IS MY OPINION, BOTH AS A LAWYER AND AS A PRIVATE CITIZEN, THAT IF SOME RELIEF IS NOT PROVIDED FOR CIVIC MINDED INDIVIDUALS WHO SERVE AS DIRECTORS AND TRUSTEES OF CHARITABLE ORGANIZATIONS, TWO THINGS WILL RESULT. FIRST, IT WILL BECOME INCREASINGLY DIFFICULT TO OBTAIN MEMBERS, AND SECONDLY, THE ORGANIZATIONS THEMSELVES EVENTUALLY WILL TERMINATE.

"I CALL YOUR ATTENTION TO THE FOLLOWING QUOTATION, WHICH IS A PASSAGE FROM A LETTER OF RESIGNATION FROM ONE OF OUR MEMBERS. I HAVE CHANGED THE NAME INVOLVED IN ORDER TO PROTECT PRIVACY. "WHO WILL BE OFFICERS? BECAUSE NO ONE HAS COME FORWARD OR BEEN ENTICED TO VOLUNTEER, SUSAN IS STILL SHOULDERING THE BURDEN--AND TRAUMA--INVOLVED IN BEING ULTIMATELY 'RESPONSIBLE'. SHE HAS GIVEN UNSELFISHLY OF HER TIME AND TALENTS AT A TIME IN HER LIFE WHEN IT WAS INCONVENIENT FOR HER TO DO SO. BUT, IT JUST GOES ON AND ON. AS WE HAVE FOUND OUT THIS PAST 18 MONTHS, THE OFFICERS AND MEMBERS OF THE BOARD MUST BE MUCH MORE 'INVOLVED' IN A SUPERVISORY CAPACITY THAN IN DAYS GONE BY. IT IS NO SMALL TIME COMMITMENT."

MR. CHAIRMAN, BIG BROTHERS AND SISTERS OF PARK COUNTY HAVE DONE A WONDERFUL JOB AND IT WOULD BE VERY SAD IF THIS ORGANIZATION HAD TO CLOSE ITS DOORS BECAUSE ITS COULDN'T FIND VOLUNTEERS TO SERVE ON ITS BOARD.

AS BILL FRAZIER SAYS, HOWEVER, THIS PROBLEM IS NOT ISOLATED. CONSIDER THIS LETTER FROM SUSAN TALBOT OF MISSOULA, MONTANA:

"FOR SEVENTEEN YEARS, I HAVE SERVED ON VARIOUS SOCIAL SERVICES BOARDS IN MISSOULA. IT HAS BEEN REWARDING TO WORK WITH DEDICATED CITIZENS ON BOARDS LIKE THE ST. PAT'S HOSPITAL, THE SYMPHONY, YOUNG AUDIENCES AND THE UNITED WAY. BUT ONE OF MY FAVORITE CHARITIES HAS BEEN THE MISSOULA YOUTH HOMES--AND IT IS BECAUSE OF AN EXPERIENCE WITH THIS GROUP THAT I AM WRITING YOU.

"SEVERAL YEARS AGO, TWO ADOLESCENT CLIENTS SUED THE YOUTH HOMES CORPORATION, THE DIRECTOR AND THE STATE DEPARTMENT OF SOCIAL SERVICES FOR OVER A MILLION DOLLARS. TO THE VERY EVIDENT RELIEF OF THE BOARD MEMBERS, THE BOARD WAS NOT NAMED IN THE SUIT, AND TO THE RELIEF OF EVERYONE THE SUIT WAS SETTLED OUT OF COURT.

"THE SADDENING WAS THE REACTION OF SOME PEOPLE WHO WERE SUBSEQUENTLY APPROACHED ABOUT BOARD MEMBERSHIP. THEIR ANSWERS WENT SOMETHING LIKE THIS: 'I THINK YOUR GROUP HOMES DO A WONDERFUL JOB, BUT WHAT KIND OF LIABILITY WOULD I BE LETTING MYSELF IN FOR?'"

NOW, MR. CHAIRMAN, THAT FEAR OF LAWSUITS IS REAL. THIS MIGHT BE MORE A PROBLEM OF PERCEPTION AS THERE HAVE BEEN FEW SUCCESSFUL SUITS AGAINST VOLUNTEERS. VOLUNTEERS HAVE BEEN SUED, HOWEVER, AND YOU SOON WILL HEAR THE TESTIMONY OF ONE, KEVIN WALKER OF RIVERSIDE, CALIFORNIA. IT DOESN'T TAKE VERY MANY OF THESE CASES FOR VOLUNTEERS TO GET SCARED OFF. IT'S JUST HUMAN NATURE TO FEAR THAT YOU ARE GOING TO BE THE NEXT VOLUNTEER TO BE SUED.

MR. CHAIRMAN, THIS COUNTRY DEPENDS ON VOLUNTEERS TO MAKE THINGS WORK, FROM TOWN COUNCILS, LIBRARIES, SCHOOL BOARDS, FIRE DEPARTMENTS AND HOSPITAL BOARDS TO SCOUT TROOPS AND LITTLE LEAGUE BASEBALL TEAMS. TO ME, VOLUNTARISM CAN BE EQUATED WITH AMERICANISM. PICTURE THIS AMERICA WITHOUT VOLUNTEERS, AS DESCRIBED BY ERMA BOMBECK IN THE CHICAGO SUN TIMES:

"THE HOSPITAL WAS QUIET AS I PASSED IT. THE RECEPTION DESK WAS VACANT. ROOMS WERE DEVOID OF BOOKS, FLOWERS AND VOICES. THE CHILDREN'S WING HELD NO CLOWNS, NO LAUGHTER.

"THE HOME FOR THE AGED WAS LIKE A TOMB. THE BLIND LISTENED FOR A VOICE THAT NEVER CAME. THE INFIRM WERE IMPRISONED ON WHEELCHAIRS THAT NEVER MOVED. FOOD GREW COLD ON TRAYS THAT WOULD NEVER REACH THE HUNGRY.

"THE SOCIAL AGENCIES HAD CLOSED THEIR DOORS--UNABLE TO IMPLEMENT THEIR PROGRAMS OF SCOUTING, RECREATION, DRUG CONTROL;

UNABLE TO HELP THE RETARDED, CRIPPLED, LONELY AND ABANDONED...THE FLOWERS ON CHURCH ALTARS WITHERED AND DIED. CHILDREN IN DAY NURSERIES LIFTED THEIR ARMS, BUT THERE WAS NO ONE TO HOLD THEM IN LOVE. ALCOHOLICS CRIED OUT IN DESPAIR, BUT NO ONE ANSWERED. THE POOR HAD NO RECOURSE FOR HEALTH CARE OR LEGAL AID."

MR. CHAIRMAN, THIS ISN'T THE COUNTRY WE WANT. WE NEED OUR VOLUNTEERS. WE NEED THE VOLUNTEER PROTECTION ACT.

The Auxiliary To The
American Optometric Association

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ALANA LaROCK
(MRS. LAWRENCE O.)
1230 West Aluminum
Butte, Montana 59701

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●

Executive Director
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243 N. Lindbergh Boulevard
St. Louis, Missouri 63141
(314) 991-4100

March 30, 1988

The Honorable John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

It has been brought to my attention that you have introduced legislation in the Senate i.e. the Volunteer Protection Act (S. 929).

As President of the Auxiliary to the American Optometric Association, a national volunteer organization, I commend and congratulate you along with fully supporting S. 929.

In a recent issue of LEADERSHIP magazine, there was an article featuring Representative John E. Porter from Illinois, who introduced this legislation in the House. The article contained a chart of states that currently had legislated volunteer protection. I was distressed to see that Montana was not listed when I was aware of recent legislation. I have enclosed a copy of Montana's legislation for your information. Is it in conformation with your proposed S 929? Or should it be changed in any way.

Thank you for your support of the volunteers of America.

Sincerely,

Alana LaRock

ALANA LaROCK (MRS. LAWRENCE O.)
President

/apl 60872
Enc.

cc: Mrs. Herbert Solomon, Glencoe, IL; EB, ED, L

Supportive of the
American Optometric Association

27-1-605. Agreements settling or compromising abolished causes of action. (1) All contracts and instruments of every kind which, after July 1, 1963, may be executed within this state in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this part, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public policy of this state and absolutely void.

(2) It shall be unlawful to:

(a) cause, induce, or procure any person to execute such a contract or instrument;

(b) cause, induce, or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action;

(c) receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement, or compromise; or

(d) commence or cause to be commenced, either as litigant or attorney, in any court of this state any proceeding or action seeking to enforce or recover upon any such contract or instrument knowing it to be such, whether the same shall have been executed within or without this state.

(3) However, this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this part or any contracts or instruments heretofore executed or to the bona fide holder in due course of any negotiable instrument which may be executed after July 1, 1963.

History: En. Sec. 5, Ch. 200, L. 1963; R.C.M. 1947, 17-1205.

27-1-606. Criminal penalty. Any person who violates any of the provisions of this part is punishable upon conviction therefor by a fine of not less than $100 or more than $1,000 or imprisonment for a term of not less than 1 year or more than 5 years, in the discretion of the court.

History: En. Sec. 6, Ch. 200, L. 1963; R.C.M. 1947, 17-1206; amd. Sec. 8, Ch. 12, L. 1979.

Part 7

Liability

Part Cross-References

Weed management district liability restrictions, 7-22-2111.

Limitation on landowner liability to recreationists, 23-2-321; Title 70, ch. 16, part 3.

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

27-1-701. Liability for negligence as well as willful acts. Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself.

History: En. Sec. 2296, Civ. C. 1895; re-en. Sec. 5077, Rev. C. 1907; re-en. Sec. 7579, R.C.M. 1921; Cal. Civ. C. Sec. 1714; Based on Field Civ. C. Sec. 853; re-en. Sec. 7579, R.C.M. 1935; R.C.M. 1947, 58-607; amd. Sec. 9, Ch. 12, L. 1979; amd. Sec. 2, Ch. 209, L. 1987; amd. Sec.

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment or position;

(b) the conduct of the employee is a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the ditch company; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the ditch company may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the ditch company concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the ditch company is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the ditch company had no obligation to defend the employee. The ditch company has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the ditch company under this subsection.

History: En. Sec. 1, Ch. 397, L. 1987.

27-1-732. Immunity of nonprofit corporation officers, directors, and volunteers. (1) No officer, director, or volunteer of a nonprofit corporation is individually liable for any action or omission made in the course and scope of his official capacity on behalf of the nonprofit corporation. This section does not apply to liability for willful or wanton misconduct. The immunity granted by this section does not apply to the liability of a nonprofit corporation.

(2) For purposes of this section, "nonprofit corporation" means:

(a) an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1954; or

(b) a corporation or organization which is eligible for or has been granted by the department of revenue tax exempt status under the provisions of 15-31-102.

History: En. Sec. 1, Ch. 437, L. 1987.

27-1-733. Liability of nonprofit organizations and their employees for injuries suffered in sponsored rodeo and similar events. (1) No nonprofit organization sponsoring a rodeo, cowboy polo, cutting horse, O-Mok-See, trail riding, horse packing, horse show, or jackpot roping event, or employee of the organization, is liable for injuries suffered by a contestant as a result of his voluntary participation in the event except for injuries caused by a willful or wanton act of the sponsoring organization or its employees.

(2) For purposes of this section, a minor is considered to be in voluntary participation in an event if:

(a) he has provided written consent to participate in the event; and

Junior League
of Great Falls, Inc.

P.O. Box 2072 Great Falls, Montana 59403
(406) 761-8030

April 17, 1988

The Honorable John Melcher
The U. S. Senate
Washington, D.C. 20510

Dear Honorable Melcher:

The Junior League of Great Falls wishes to be on record in support of S. 929, the Volunteer Protection Act.

The cost of Directors' and Officers' insurance for our League this year was approximately 7% of the total budget. The Directors' and Officers' insurance premium this year was 58% of the projected income of one of our major fund raisers (approximately $3500).

The League also has faced the problem of certain volunteers not wishing to become involved in League projects or sit on the League Board of Directors because of the risk of being sued and the related loss of time and possible costs of such suits.

Volunteers are an essential component of our society. The Association of Junior Leagues' position statement on voluntarism states that action will be taken to insure the effectiveness of the efforts of its volunteers. As a local League we strongly support the legislation outlined in S. 929.

Sincerely,

Coleen Eidel

Coleen Eidel, Chairman
Community Issues

Barbara Holden

Barbara Holden, President
Junior League of Great Falls, Inc.

volunteers caring ... community sharing

May 9, 1988

AMERICAN COUNCIL ON ALCOHOLISM

National Executive
Offices
8501 LaSalle Road
Suite 301
Towson, MD 21204
(301) 296-5555

The Honorable Senator John Melcher
SH.730 Hart Senate Office Bldg.
Washington, DC 20510

Dear Senator Melcher:

Unfortunately, time does not permit us to submit testimony for Senate Bill 929, but let me express our volunteers' enthusiasm about the bill.

I have had a loss of volunteers due to the liability issue. Of course, I have also paid extensively to maintain some levels of liability insurance for our directors and officers. However, it is never enough if a major suit were ever to transpire.

The American Council on Alcoholism is enthusiastically in favor of Senate Bill 929 and supports your actions in passing that bill during the 100th Congress. On behalf of our members, let me express my gratitude to you for following through on this important legislation.

Let us know how we can help in the future.

Best regards,

Walter P. Pidgeon, Jr., CAE
National President

WPP:jam

B'NAI B'RITH INTERNATIONAL

1640 Rhode Island Ave., N.W.
Washington, D.C. 20036
(202) 857-6600
TWX 710-822-0068 / Cable BNAIBRITH WASHDC

May 10, 1988

The Honorable John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

B'nai B'rith International wishes to express its support for S929, the Volunteer Protection Act.

B'nai B'rith, the world's largest Jewish organization, was founded in 1843 to promote Jewish continuity and work for the betterment of society. Besides its adult membership of over 500,000 members, B'nai B'rith also serves Jewish youth through its B'nai B'rith Youth Organization for teenagers and B'nai B'rith Hillel Foundations for Jewish college students and faculty. The Commission on Community Volunteer Services is B'nai B'rith's vehicle for moving out into the general community and offering our services and people power whenever it is needed.

Volunteers are the backbone of B'nai B'rith. Our members serve as volunteers whether they participate in community service projects or accept responsibility as lodge/chapter/regional officers. Our volunteers are very special and deserve as much protection as possible from personal liability when they are performing a volunteer job.

B'nai B'rith carries comprehensive general liability protection for its members. However, the cost of this protection has jumped over 600%!! We are not the only voluntary organization that has faced a dramatic increase in liability insurance rates. A lack of available and affordable liability coverage for volunteers may result in the loss of millions of volunteer hours of community service.

We urge Senator Heflin and the other members of the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practice to pass S929 in their committee and forward it on to the Senate floor for a favorable vote.

Sincerely yours,

Seymour Cohen

Seymour S. Cohen, ACSW
Director
B'nai B'rith Commission on
Community Volunteer Services

SSC:jt

A program for Cub Scouts, Boy Scouts, and Explorers

National Office
BOY SCOUTS OF AMERICA

1325 Walnut Hill Lane, Irving, Texas 75038-3096
Telephone: 214-580-2000

May 12, 1988

The Honorable John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

The Boy Scouts of America is a volunteer led youth movement which has been successfully involved in character development, citizenship training and personal fitness for America's youth for over 78 years. The work of scouting is carried on through the commitment and personal involvement of millions of volunteers working through sponsoring organizations. The Boy Scouts of America and the millions of volunteers have become an integral part of our American life.

I proudly note that 65 senators and 274 representatives from the 100th Congress participated in scouting. Included in their ranks are 39 distinguished Eagle Scouts. Clearly, scouting has made an impact on America's youth.

At the end of 1987 over 4.1 million youth were involved in the scouting program. They were led by more than 1.1 million volunteers. One could not merely say that scouting would be more costly without volunteers. Clearly without volunteers scouting would cease to exist as we know it.

I know that volunteers are concerned about whether their personal assets are at risk because of their involvement in scouting. Since 1980 the movement of youth in scouting programs has grown by 30%, while the movement of volunteers participating in these same programs has grown by less than 4%.

I believe that the Volunteer Protection Act of 1987 would be a major step in alleviating the concerns of financial risk for these volunteers.

Sincerely,

Ben H Love

Ben H. Love
Chief Scout Executive

BHL:csm
0783x

PLEASE NOTE NEW MAILING ADDRESS:
Boy Scouts of America, 1325 Walnut Hill Lane, P.O. Box 152079, Irving, Texas 75015-2079

The National PTA
Office of Governmental Relations
1201 16th Street N.W.
Washington, D.C. 20036
(202) 822-7078

May 12, 1988

The Honorable John Melcher
730 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Melcher:

This letter is to strongly voice the support of the National PTA related to S. 929, the Volunteer Protection Act. We thank you for your interest in individual volunteer immunity, and taking the lead in sponsoring this bill.

Attached is the written testimony of the National PTA which we have also forwarded to Mr. Tom Young of the Senate Judiciary Subcommittee on Courts and Administrative Practice. We appreciate the opportunity to be heard, and also the consideration of Chairman Heflin in scheduling the hearing. Obviously, we will do whatever we can to urge passage of the bill before the end of the session.

Again, our personal thanks,

Millie Waterman

Millie Waterman, Vice-President for Legislative Activity

Arnold F. Fege, Director
Governmental Relations

cc: Mr. Tom Young ✓
223 Senate Hart Building

Mrs. Barbara Millhouse,
Montana State PTA President

Mrs. Helen Volden,
Montana State PTA Legislative Chair

Encs:
AFF/af

The National PTA
Office of Governmental Relations
1201 16th Street N.W.
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Testimony by
THE NATIONAL PARENT-TEACHER ASSOCIATION

Before the
Judiciary Committee's
Subcommittee on Courts and Administration Practice
United States Senate

Regarding
the concept of volunteer protection
and
S. 929, the Volunteer Protection Act

Submitted by
Millie Waterman
Vice-President for Legislative Activity
The National PTA

May 20, 1988

Mr. Chairman, and members of the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practice. The National PTA thanks you for the opportunity to submit a statement regarding volunteer liability, an issue that has major implications for the current and future members of our organization. We also commend Senator John Melcher for his sponsorship of S. 929, the Volunteer Protection Act, as well as those Senators who have signed on to S. 929 as cosponsors. The measure is a major step in assuring individual volunteers some basic and minimal protection against liability litigation.

The National PTA is the nation's largest child advocacy organization with over 6.4 million members representing all 50 states and the District of Columbia. As a 501 (c) (3) tax-exempt organization adhering to noncommercial, nonpartisan and nonsectarian principles, the National PTA pursues programs, legislation and activities meeting the needs of children and youth in the community. Members join local units which are school-linked and total over 25,000 nationwide, and are automatically members of the state PTA and the National PTA.

PTA members are engaged in a vast array of programs and activities which strive to assure quality education, health, and protection programs for children. While each local unit is programmatically independent, PTA members are actively engaged as officers of their local unit, volunteers in their school and community, legislative advocates for children at the local, state, and federal levels, and leaders in developing programs which involve parents in the education of their children.

PTA members across the country volunteer thousands of hours of their time in such activities as preventing drug and alcohol abuse; assuring child safety and protection, including the safety of latchkey programs; working as school and community volunteers, assisting in such tasks as lunchroom supervisors, classroom aides, and tutors, crossing guards, hosting and supervising extra-curricular activities; sponsoring teacher and student recognition days; chaperoning chemical-free graduation parties; hosting and/or chaperoning educational field trips for students, and assisting in summer school activities; monitoring local, state and federal legislation, visiting public officials urging better laws for children and youth, and coordinating strong legislative committees in each local unit; and, sponsoring fundraising activities such as book fairs, science fairs, athletic events and field days, and the sale of refreshments at school and carnivals. The efforts and dedication of PTA members frequently supplement the educational program, provide caring supportive programs for children and youth, and meet the obligation of citizenship by devoting free time to community and public efforts.

The opportunity for a parent to participate and enhance his or her child's life must not be threatened by the potential of law suits. Yet throughout our organization, we've seen an increasing threat to the financial security of our members caused by either liability lawsuits or the threat of them. We've had cases where individuals declined to serve as PTA officers, we've had cases where PTA units could not afford the rising costs of liability insurance, and, we've had cases where PTA units have had to reduce the spectrum of liability coverage. In addition, while we lack systematic data, we know that there is a perception of fear about the possibility of being sued. Under these circumstances, how long can we expect volunteers to continue to come forward.

The major focus of discussion in our organization pertaining to liability exposure has been related to the increased costs, reduced coverage, and frequent inaccessibility to liability insurance. Many school districts which in the past have covered

PTA units often have difficulty in securing adequate insurance themselves. Many of our local units are attempting to reduce their risks through more effective management, such as obtaining audited financial statements annually, approving budgets by a governing board, bonding the bookkeeper and treasurer, evaluating activities that might increase risk, keeping well documented minutes of every meeting, providing more effective volunteer training, and developing well-defined job descriptions. However, these measures by themselves are not sufficient to assure individual volunteers that they would not be exposed to a lawsuit which could cost them their personal assets.

Clearly, the three areas of liability concern for individual volunteers are:

1. Volunteers delivering direct service;
2. Volunteers as officers of the board of managers; and/or
3. Volunteers on advisory committees, coalitions, and commissions.

S. 929 is a critical step in addressing these concerns and in providing additional protection to volunteers. Clearly, we are not asking for a blanket protection where a volunteer is a direct participant in wrong-doing or where willful and unintentional misconduct occurs. However, we believe that where a lawsuit arises in the case of an injury that was not a result of a

Fourthly, the National PTA opposes the "trigger mechanism" that would withhold one percent of Social Services Block Grants from any state that fails to extend liability protection to volunteers by the beginning of the 1989 fiscal year, and redistribute those funds to the states that have complied. Social Services monies are critical in providing support systems to children and families and we reject the notion that they should suffer as a result of a state legislator not wanting to reform tort laws. In addition, we believe that a "carrot" would be more effective, and that a state should receive an additional one percent social services Block Grant allocation if they enact volunteer protection laws.

The National PTA believes S. 929 will have a major impact on recruiting and retaining quality volunteers, in improving the management and administration of volunteer services, and in reducing insurance premiums. In the case of the PTA, the chief beneficiaries will be our children--and thereby--society. We thank the subcommittee again for their interest in assuring protection for thousands of volunteers across the country.

deliberate act during a non-profit program or activity, S. 929 will make it more difficult for plaintiffs to meet the heightened burden of proof. Therefore, the plaintiffs are less likely to sue the individual volunteers or the individual board members.

Secondly, while S. 929 would provide individual volunteer protection, it also would motivate more effective management practices. The tandem complement each other, and the volunteer organizations understand that those who exercise sound management are those who are the most likely to successfully defend themselves against lawsuits.

Thirdly, it is understood that the passage of S. 922 does not eliminate the need for blanket insurance coverage by the non-profit nor does it suggest that S. 929 is blanket coverage itself. We also understand that in the short run, there will be considerable testing and defining of S. 929, especially as it pertains to defining willful and wanton misconduct. As one of our Colorado members has stated "even much of the state legislation pertaining to protection of volunteers is untested and may not cover all activities. Every state PTA should encourage its local units to have additional liability coverage." In the long term, we believe the volunteer protection laws will have the effect of reducing claims (and eventually premiums) as well as reducing the kind and amount of coverage required by our organization.

May 13, 1988

The Honorable John Melcher
U.S. Senate
Washington, DC 20510

Dear Senator Melcher:

As you well know, the heart and soul of this country's great charitable movement is the volunteer. This invaluable resource provides the backbone of our nation's town councils, libraries, school boards, little league teams and, most importantly, state humanities councils.

The Federation of State Humanities Councils would like to express its strong support for your bill S. 929, the proposed Volunteer Protection Act of 1987, which is intended to protect volunteers from personal civil liability.

Since the early 1970's, in town and cities across the country, Americans have attended lectures and exhibits, participated in seminars, and gathered to read and discuss works of literature, all funded or conducted by a state humanities council. The councils have become cultural leaders in the states, forging links with other organizations and with the academic community to enrich the lives of their citizens.

Each council is organized whereby they are required by Federal law to have a governing body, all of whom are volunteers. This governing body, or "volunteers", are responsible for approving or disapproving grants to organizations and individuals in their state for the purpose of bringing the humanities to the public. The governing bodies are obviously placed in a situation whereby they must choose one proposal over another. This places the council in the possible position of being sued because an individual or organization may feel they have been unfairly judged in the review process.

The threat of being sued causes councils to be placed in a situation where they must carry insurance to protect themselves from loss. Unfortunately, the increase of volunteers being sued has meant that insurance costs have begun to rise steadily. This burden of paying ever increasing insurance costs takes money away from what could be funding additional lectures, touring historical programs or reading programs.

The other circumstance councils might face is the unwillingness of potential council members from serving on the governing board. Scared of being personally held liable for an action by a council these individuals may decide not to become involved. This truly would be unfortunate as possibly some of the best people in these states would not be included in this important work. Not only does the council suffer but the citizens of that state.

The humanities have an integral part to play in the discussion of the major issues of our day. Many of the great texts of the Western tradition arose in response to controversy. It is the humanities which help us debate national concerns, of ethics, for example -- medical, business or political. It is the humanities which help us plumb the reflections of the elderly, break down the barriers of isolation, allows us to talk to each other across the differences of race, gender or family experience, help communities inventory their bonds of history and place, console in sorrow and no less important in American life, the humanities give us delight, wonder, laughter.

Would it not be a terrible tragedy if one day the humanities were not available to our society simply because the state humanities councils could not afford liability insurance or attract expert volunteers?

The Federation of State Humanities Councils applauds your efforts in support of this nation's volunteers and strongly supports S. 929, the proposed Volunteer Protection Act of 1987.

Sincerely,

Nancy Stevenson

Mrs. Adlai Stevenson
President

AMERICAN
LEGISLATIVE
EXCHANGE
COUNCIL

1988 MAY 21 PM 11:50

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Constance C. Heckman

May 16, 1988

The Honorable Senator John Melcher
United States Senate
730 Hart Building
Washington, DC 20510

Dear Senator Melcher:

Thank you for the invitation to testify before the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practice concerning S. 929, the Volunteer Protection Act. Unfortunately, I have a schedule conflict and I am unable to attend the Friday, May 20th meeting.

Although I cannot be physically present, I would like to express support for the legislative intent of S. 929. As you know, ALEC has been a leader in state tort reforms since 1985, and we will continue to inform the state debates to ensure a fair civil justice system. Certainly, the American Legislative Exchange Council, America's largest individual membership association of state legislators, prefers that the majority of tort revisions occur on the state level. However, we do believe that volunteers should be immune from liability, except in cases of willful and wanton neglect, and that such a blanket immunity is best provided at the Federal level.

Our civil justice system, with its quilt of tort laws, is crippling the spirit of volunteerism that has made our country great. We simply cannot allow this form of legal extortion to continue. For this reason, we applaud your actions, Senator Melcher, and we offer our support.

Sincerely,

William C. Myers
Executive Director
(Interim)

214 Massachusetts Ave., NE • Suite 400 • Washington, DC 20002 • 202/547-4646

[illegible]H, Pres. of Council
JOAN MINNIE, City Clerk
R. A. PAWELKO, Treasurer
GARY THOMAS, Comm. of Public Works
ASK & PRATT, Attorney
LUBA RACKI, Police Magistrate
LEONARD WALL, Fire Chief

JOSEPH VICARS, Mayor

City of Roundup
Montana

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MARI JANE ORNER, 1st Ward
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WILLIAM FUNK, 4th Ward
ROBERT MIHALOVICH, 4th Ward

May 16, 1988

Honorable John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

The Roundup Volunteer Fire Department would like to ask for your support in passing S. 929. Liability insurance costs are becoming a real burden, financially to continuing our service. Many of our members are concerned about their own liability, because of their volunteer status with this department.

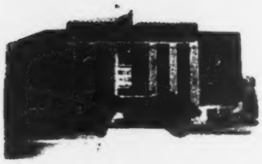
Please support the passage of this legislation as we view it as a step in the right direction for a major concern for volunteer fire services. Thankyou for your support.

#55465

Sincerely,

Leonard A. Wall

Leonard Wall, Chief
Roundup Volunteer Fire Department



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Justice of the Peace

May 16, 1988

Honorable John Melcher
United States Senate
Washington, D. C. 20510

Re: S. 929

Dear Senator Melcher:

This letter is in support of S. 929. We have not experienced a recruitment problem because of fear of lawsuits, although existing members have expressed a genuine concern about their exposure. Escalating liability insurance costs are a real negative factor in this county because revenues to operate are declining under our system of taxation.

Any assistance you can offer to pass this legislation will be very much appreciated. Passage should have a positive impact in our situation. Thankyou.

Sincerely, # 55088

Duane A. Brewer

Duane Brewer, Chief
Musselshell County Rural
Volunteer Fire Department

MONTANA CONGRESS OF
PTA
PARENTS AND TEACHERS

May 16, 1988

103 Marion Pk Wy
Hamilton, MT 59840

The Honorable John Melcher
730 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Melcher:

Thank you for your May 9, 1988 memo regarding the scheduled hearing on S. 929, the Volunteer Protection Act.

The Montana PTA, the state's largest child advocacy organization with over 10,000 members, strongly supports this legislation.

PTA members are volunteers engaged in a variety of activities and programs while advocating for children---striving to assure quality education, health, and protection programs for children.

Parents and other volunteers must have the opportunity to participate and enhance his or her child's life without the threat of a potential law suit.

We must also recognize that there are PTA units that cannot afford the rising costs of liability insurance. Some PTA units already have had to reduce their liability coverage increasing unnecessary risks of a lawsuit.

We firmly believe, it is because of the threat of lawsuits (and some actually being carried out), that adults are becoming more and more reluctant to come forward as volunteers.

Again, we thank you for your promotion of this vital legislation----which is indeed, a step in the right direction.

Sincerely,

Helen Volden

Helen J. Volden
Montana PTA Legislative Coordinator

cc: NPTA Office of Governmental Relations

Silver Bow Volunteer Firemen's Council
350 Josette
Butte, Montana

May 16,1988

Senator John Melcher
730 Hart Building
Washington D.C. 20510

Sir,

We the volunteer firemen of Silver Bow County are having trouble with recruitment of new people and the keeping of the people we have because they are worried that if if the people think that we did something wrong like " to much water on the fire or cut a ventilation hole in the roof or wall that they think was not necessary that the people will sue them. We tell them that if they only do what they are trained to do and no more that they will have a hard time sueing them but I think that they are still afraid it will happen and the will loose everything that they worked so hard to get.

We have also noticed that liability insurance for volunteer organizations is so out of sight that a non-profit organization can not afford to purchase the insurance that is need to protect there people.

We think this bill will help in our recruitment and the keeping of our people if they know that they would be given immunity from cicil liability in cases where they only do what they are capable of and taught to do and no more.As long as they knew that they could not loose everything they owned I think they would be more than willing to give their time.

Thany you

Sincerely,

Mike Doto
Mike Doto

Whitefish County Water & Sewer District
P.O. Box 1755 · Whitefish, MT 59937 · 406-862-4139

May 16, 1988

Senator John Melcher
730 Hart Office Bldg.
Washington, D.C. 20511

Re: Volunteer Protection Act

Dear Senator Melcher;

Our Board has witnessed hours of procrastination over the current barrier to virtually all progressive thinking - liability of Directors. We have reason to believe the fear of individual liability has precluded several qualified candidates from running for the District Board, and very possibly encouraged the resignations of others.

Insurance to cover Directors is prohibitively expensive, if it can be procured at all. Our inquiries into O & E insurance have all been slow, cumbersome, and eventually unsuccessful. Insurance companies simply do not know what a 'County Water and Sewer District' is, can't understand it is not a government agency, and apparently don't see the economic gain in going through the learning process. Therefore, from our experience, passing a Volunteer Protection Act such as S. 929 is not in competition with the insurance industry.

Please support Senate Bill 929. Particularly important is the definition of a volunteer; as written, it covers directors of organizations which, by statute or bylaws, are allowed reimbursement for expenses or a minimal allowance for their time spent in meetings. For example, Montana Code allows for $30 per month for payment to Directors for attending regular meetings. Directors may choose to not accept payment. In either case, they must be covered by such an act. They are volunteers in every sense of the word.

Sincerely,

William E. Leonard
General Manager

cc: Senate Judiciary Subcommittee on
Courts and Administrative Practice

Senator Max Baucus

LUPUS FOUNDATION
OF AMERICA, INC.

1717 MASSACHUSETTS AVE N.W. SUITE 203
WASHINGTON, D.C. 20036 (202) 328-4550

May 17, 1988

Senator John Melcher
730 SHOB
Washington, DC 20510

Dear Senator Melcher:

The Lupus Foundation of America, Inc. wishes to express our support for S. 929, the Volunteer Protection Act. Please submit this letter with your testimony to the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practice hearing scheduled for May 20, 1988.

Volunteers are the backbone of the Lupus Foundation of America. We have over 30,000 volunteers in 46 states. However, the ongoing liability crisis threatens to cause volunteers to reevaluate their risk of exposure to lawsuits against their incentive to volunteer. In particular, it is difficult for many of our chapters around the country to find volunteers willing to serve as volunteer board members.

We applaud the Subcommittee on Courts and Administrative Practice for holding hearings on this issue and urge Congressional action. Volunteers across the country look forward to working with you to ensure the day when they can once again give freely of their time, energy and talents without fear of litigation. Thank you for your concern.

Sincerely,

James E. Lewis

James E. Lewis, Ph.D.
President
Lupus Foundation of
America, Inc.

MAP inc.
Midwest Assistance Program

KENNETH BRUZELIUS
EXECUTIVE DIRECTOR

POST OFFICE BOX 61 NEW PRAGUE, MN 56071 (612) 758-4334

May 17, 1988

Reply to:
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816/436-5757

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Senator John Melcher
SH-730 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Melcher:

Our agency has been involved in a networking project for the past 21 months with County Water and Sewer Districts in Montana and Sanitary Districts in South Dakota.

Since we began identifying the 88+ districts in Montana and the 30+ districts in South Dakota, we have become aware of their difficulties in getting people to stand for election to serve on their Boards of Directors, and the biggest single reason seems to be the inability of Districts to obtain D&O insurance to cover the liability of the directors.

Therefore, we would strongly urge the passage of S.929 which is known as the "Volunteer Protection Act of 1987". The immunity from liability for directors of County Water & Sewer Districts (which are very small governmental entities) would allow the districts to recruit top-notch people to serve on their boards.

I would urge your support of S.929 and would hope that this letter could be entered into the record as part of the hearing of the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practice.

Thank you for your consideration.

Sincerely,

Judy Sass

Judy Piersol-Sass
Project Coordinator

JPS

MONTANA ASSOCIATION OF COUNTY WATER AND SEWER DISTRICTS

Senator John Melcher
SH-730 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Melcher:

On behalf of the Montana Association of County Sewer Districts, I am writing to urge support for S.929, "Volunteer Protection Act of 1987".

The County Water & Sewer Districts in Montana are faced with the loss of good people to serve on their Boards because of the financial inability or simply lack of availability of districts to obtain Directors and Office liability insurance.

We believe that the immunity provided to volunteers of small governmental entities by S.929 would be the best answer for these small districts.

We also would hope that on page 5, section 6, lines 16 and 17 that the language referring to compensation would apply to whatever amount is allowable by state law as reimbursement for expenses by directors. In some states this could exceed $300 mentioned as an honoraria. We weren't quite clear on the meaning of this section.

Again, on behalf of the MT Association of County Water & Sewer Districts, I urge your support of S.929. We would hope that this letter could be entered into the record as part of the hearing on the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practive.

Thank you for your consideration.

Sincerely,

Judy Sass

Judy Piersol-Sass
Project Coordinator
P.O. Box 187
Vale, SD 57788

NAWC
NATIONAL ASSOCIATION OF WATER COMPANIES

JAMES B. GROFF, EXECUTIVE DIRECTOR

May 17, 1988

The Honorable John Melcher
United States Senate
SH-730 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Melcher:

On behalf of the National Association of Water Companies, I am pleased to express our support of S. 929, the Volunteer Protection Act. We appreciate your willingness to submit this letter to the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practices during your testimony at the hearing scheduled for Friday, May 20, 1988.

The Association shares your concern for protecting the volunteers among our membership so vital to the productivity and effectiveness of not-for-profit organizations. Meeting the unique challenges of such an association should not be hampered by the legal barriers addressed by this promising legislation.

Sincerely,

James B. Groff nop

James B. Groff
Executive Director

JBG/nop/s

SUITE 1212, 1725 K STREET N.W. • WASHINGTON, D.C. 20006 • (202) 833-8383

NCA

1625 Eye Street NW, Suite 609
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202/466-8424

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EXECUTIVE VICE
PRESIDENT

Gerard F. Hurley

May 17, 1988

The Honorable John Melcher
730 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Melcher:

The National Club Association supports S. 929, the Volunteer Protection Act, and commends the Subcommittee on Courts and Administrative Practice of the Senate Judiciary Committee for holding hearings on this much-needed legislation.

NCA, like many organizations across the country, is extremely concerned about the declining number of our members who are willing to volunteer their talents and time to serve on our Board of Directors. Volunteers are vital to the success of every NCA program and activity.

It is our judgment that the reason for this decline is twofold. First is the ever growing threat of lawsuits. Our members are fearful of the possible loss of their personal assets if NCA is sued while they serve on our Board of Directors. Secondly, in order to protect our Board from damaging lawsuits, NCA is forced to pay expensive insurance premiums. This is a drain on our income which decreases the services we are able to offer to our members.

Moreover, similar morale, motivation and liability problems are faced by all of NCA's member clubs as they attempt to promote volunteer service among their members as officers, directors, committee chairpersons and members.

S. 929 would solve these problems for NCA and all non-profit organizations by encouraging states to grant volunteers of tax-exempt organizations immunity from personal civil liability for actions which they take on behalf of their organization. NCA urges Congress to approve this legislation especially if it can promote comprehensive solutions not limited merely to volunteer officers and directors.

The National Club Association is the only trade association serving the business, legal and legislative interests of private clubs nationwide. Our present membership is comprised of 1,000 private social, athletic and recreational clubs around the country.

Sincerely,

Gerard F. Hurley
Executive Vice President

NEIGHBOR FOR NEIGHBOR, INC. ☐ 1506 East 46th St. North ☐ Tulsa, Oklahoma 74126

May 17, 1988

Senator John Melcher
Hart Senate Office Building
Room 730
Washington, D. C. 20510

Dear Senator Melcher,

Neighbor For Neighbor Anti-Poverty Movement in Tulsa, Oklahoma strongly supports and urge passage of S.929, the Volunteer Protection Act.

The enclosure will show you that we depend almost entirely on volunteers within our organization to respond to the needs of the poor.

Please represent us in your testimony to the Subcommittee on May 20th.

The passage of this bill will make it more feasible for citizens to utilize a movement such as ours to serve the indigent, without fear of lawsuits.

Thank you.

Sincerely,

Daniel R Allen

Dan Allen, Director,
Neighbor For Neighbor, Inc.

Carol A. Falletti

Carol A. Falletti, Director,
Neighbor For Neighbor Free Clinic

AOTA The American
Occupational Therapy
Association, Inc.

May 18, 1988

The Honorable John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

Thank you for the notice that the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practice has scheduled a hearing on S. 929, the Volunteer Protection Act, for Friday, May 20, 1988.

The American Occupational Therapy Association, Inc., is a non-profit corporation representing the professional interests of some 45,000 occupational therapy personnel throughout the country. Our public purpose programs include accreditation of occupational therapy curricula at community colleges and universities and certification of individuals to practice occupational therapy as allied health professionals.

The American Occupational Therapy Association supports S. 929 and believes the bill will provide relief to all volunteer organizations that have experienced difficulty in recruiting and retaining quality volunteers as a result of the fear of lawsuits or escalating liability insurance costs. The AOTA has experienced this difficulty since the Spring of 1986 when our liability insurer suddenly canceled our insurance.

The AOTA depends heavily on volunteers to perform the work of our Accreditation Committee, the Standards and Ethics Commission, and the Occupational Therapy Certification Board, as well as many other functions of the Association. During the past two years, recruited volunteers have turned down invitations to serve on these bodies because of fears of personal liability which the AOTA could not address to the individuals' (and their employers') satisfaction. During this time, AOTA's experience has been that it takes much longer to fill vacancies than when liability insurance was easily available to the Association.

Thank you for this opportunity to support S. 929.

Sincerely,

Thomas J. Steich

Thomas J. Steich, Esquire
General Counsel

TS:cam

Occupational Therapy:
A Vital Link To Productive Living

1383 Piccard Drive
P.O. Box 1725

Rockville, MD 20850-4375
(301) 948-9626

May 18, 1988

The Honorable John Melcher
United States Senate
Washington, DC 20510

Dear Senator Melcher:

On behalf of the 400,000 members of the National Multiple Sclerosis Society I would like to express our support for S.929, the Volunteer Protecton Act.

The National Multiple Sclerosis Society is the only organization supporting research on funding the cause, cure and treatment of multiple sclerosis nationally and internationally. We also provide a wide range of services in every state through our 98 local chapters.

Each chapter is guided by a volunteer Board of Trustees. Including our National volunteers, there are approximately 3,600 volunteer directors leading our organization.

Recruiting community leaders to fill the above mentioned positions is becoming increasingly difficult as a direct result of real and perceived fear of liability issues. The quality and quantity of local services our chapters provide, as well as the amounts of funds raised for research, is directly related to the quality of individuals we can attract to our volunteer leadership positions.

To help offset the problem, our National office purchases directors and officers liability insurance coverage. As a result of increased litigation against volunteers in general, our costs for this policy have been steadily rising from 50% to 100% annually.

S.929 is important because it will set a minimum standard of protection for volunteers in all states. With protection everywhere, we hope that not only will insurance costs go down, but the liability question will no longer be an obstacle to recruiting local community and business leaders to guide our voluntary health organization.

Thank you for introducing S.929. Please let us know if there is anything we can do to expedite its passage.

Sincerely,

John P. Donnelly
Vice President
Public Affairs

JPD:ea
cc: Ms. Jean Heppner, Executive Director, Montana Chapter
Gordon McDougall

CALIFORNIA
CREDIT UNION
LEAGUE

A Member of the National Credit Union System

May 19, 1988

Honorable John Melcher
U. S. Senate
Washington, D.C. 20510

Dear Senator Melcher,

Re: Support of S. 929

On behalf of the 1,000 plus California credit unions and the more than 15,000 volunteers serving those credit unions, I am writing in strong support of your bill S. 929. While I may have preferred to see the bill mandate a more immediate solution, it clearly sets in motion a move toward needed legislative redress.

You, Senator, know our credit union movement very well. Your long time and close association with Montana credit unions certainly makes it easy for you to assess the growing concerns of our volunteers. Recent press coverage of suits against corporate directors has heightened that concern. Citing liability fears, dedicated volunteers are increasingly rejecting pleas to seek reelection or reappointment.

While all of our credit unions are insured against liability losses, this does not preclude the directors from being the target of a protracted law suit. For example, a lawyer representing credit union members injured on slippery credit union sidewalk would be considered remiss if he did not also name the volunteer board members in the suit.

Similar situations abound for all trade associations, and the board members and officers of our own league are also expressing growing concerns. Clearly, a legislative solution is needed to stem a trend which would leave credit unions and other associations without talented volunteers. We support S. 929 and I am personally eager to assist you in your bid for its passage.

Sincerely,

Wilfred F. Broxterman
President

cc: Tom Young, Subcommittee Counsel
Senate Judiciary Subcommittee on Courts &
Administrative Practice

2350 South Garey Avenue, Pomona, CA 91766 • 714/628-6044

Helicopter
Association
International

1619 Duke Street, Alexandria, Virginia 22314-3406 Telephone 703/683-4646 Telex 89-615

May 19, 1988

The Honorable John Melcher
United States Senate
730 Senate Hart Office Building
Washington, DC 20510

Re: S.929 - "Volunteer Protection Act of 1987"

Dear Senator Melcher:

In response to your letter of May 3, 1988, I am writing this letter as a show of Helicopter Association International's (HAI's) support of S.929 now before the Senate Judiciary Subcommittee on Courts and Administrative Practice.

I will not be able to attend the hearing, scheduled for May 20, 1988, but HAI's Legislative Manager Matthew D. Ubben will attend on HAI's behalf. I would ask that this letter be presented to the Subcommittee during your testimony.

We believe that S.929, and the House companion bill--H.R.911, will encourage the states to enact legislation to grant immunity from personal civil liability to volunteers working on behalf of nonprofit organizations such as ours. This relief is sorely needed.

Currently, our volunteer leaders still suffer from exposure to liability. Although director and officer liability insurance is available on a limited basis, it is becoming increasingly expensive and restrictive in coverage.

HAI's Legislative Advisory Committee continues to lobby for general tort reform with emphasis upon products liability and aviation products liability relief. Your legislation is equally important in that it will allow us to continue to attract volunteer leaders to serve the needs of the helicopter industry.

We support S.929. If enacted into law, frivolous lawsuits against association volunteers will be dissuaded.

Sincerely,

Frank L. Jensen, Jr.
President

cc: HAI Board of Directors

Dedicated to the advancement of the civil helicopter industry

4-0270075140 05/19/88 ICS IPMMTZZ CSP POMH
7166315282 POM TDMT CHEEKTOWOGA NY 69 05-19
0316P EST 15:17 EST

western union

Telegram

SENATOR JOHN MELCHER
CAPITOL ONE DC 20510

DEAR SENATOR MELCHER
PLEASE ACCEPT OUR GRATITUDE FOR YOUR LEADERSHIP TOWARDS PASSING AND OUR SUPPORT OF THE VOLUNTEER PROTECTION ACT S.929. THE 6430 ADULT RUNNERS WITH LITERACY PROBLEMS AND OVER 6400 VOLUNTEERS SERVING THEIR NEEDS IN OUR SYSTEM ARE EVIDENCE OF THE VALUE OF A NEED TO PROTECT THIS NATIONAL CHARACTERISTIC AND RESOURCE, CALLED VOLUNTEERISM. PLEASE SHARE WITH YOUR COLLEAGUES HOW STRONGLY WE FEEL ABOUT THIS ESSENTIAL LEGISLATION. SINCERELY,

LITERACY VOLUNTEERS OF NEW YORK STATE
777 MARYVALE DR
CHEEKTOWOGA NY 14225

15:17 EST

IPMPOMX WSH

ncjw

National Council of Jewish Women
15 East 26th Street
New York, New York 10010
212-532-1740 Telex: 428540 NCJW UI

1988 MAY 21 AM 11: 11

President
Lenore Feldman

Executive Director
Dadie Perlov, CAE

Washington Office
Suite 1012
1101-15th Street, N.W.
Washington, DC 20005
202-296-2588

Israel Office
NCJW Research Institute
School of Education
Hebrew University
Mount Scopus
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May 19, 1988

Senator John Melcher
US Senate
Washington, DC 20510

Dear Senator Melcher:

It was encouraging to hear you champion the Volunteer Protection Act at the ASAE coffee session this morning. Special thanks for inviting our testimony, which is also attached.

The National Council of Jewish Women applauds your leadership on so many of the issues which concern us, and stands ready to work beside you. We look forward to celebrating with you the passage of S. 929/H.R. 911, at an early date.

Sincerely,

Dadie Perlov

Dadie Perlov, CAE
Executive Director, NCJW
Board Member, ASAE

DP/arc

THE AMERICAN RADIO RELAY LEAGUE, INC.
[illegible] SECRETARIAT OF THE INTERNATIONAL AMATEUR RADIO UNION
ADMINISTRATIVE HEADQUARTERS NEWINGTON, CONNECTICUT, U S A 06111

LARRY E. PRICE
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JAY A. HOLLADAY
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GEORGE S. WILSON III
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QST

May 19, 1988

The Honorable John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

Attached are some anecdotes collected from members of the American Radio Relay League, Inc., about the need for S. 929, the Volunteer Protection Act. I would very much appreciate having them inserted in the record.

Sincerely,

Perry

Perry Williams,

Secretary

ANECDOTES IN SUPPORT OF VOLUNTEER PROTECTION ACT

OWENSBORO, KENTUCKY

The amateurs in Owensboro, Kentucky provide communications for hydroplane races on the river each year. These boats may weigh 6,000 pounds, and race at speeds as great a 200 mph. Hypothetical situation: an amateur radio operator is manning a checkpoint on a bend. Just as a boat reaches the operator, it flips over. He must react instantly; call for the smoke signals which warn other boaters to stay clear and dispatch a rescue boat to pick up the driver. If another boat doesn't see the warning, he could plow into the overturned hydroplane, crash into the rescue boat or hit the driver. The ham, the volunteer on the scene who has had to use his instantaneous judgment, will be involved in any lawsuit which follows...!

In about 1978 there was flooding in Pike County, Kentucky. The Phelps Community Hospital, in Phelps, Kentucky, LOST ALL ITS COMMUNICATIONS AND CLOSED DOWN. A TEAM OF AMATEUR OPERATORS was flown in by helicopter, supplied communications and the hospital was reopened. One of the first messages passed by the hams was a two-page request for drugs. The drugs were flown in and all was well. But suppose the amateur had stumbled over one of those unfamiliar names, and the wrong medicine was sent in, in place of that which was needed. The volunteer would share liability - for having done the job.

Amateurs were performing communications services for the 1986 March of Dimes Walk-a-Thon in Nashua, NH. At a mobile-home park along the route, there was a shoot-out between police and a suspected criminal. The amateurs were tasked with notifying all the walkers to keep out of the area. Had they failed, and a walker gotten wounded or killed, the hams certainly would have been sued.

In 1987, Nashua, NH hams furnished emergency communications during a flood, when the phones were out. At an emergency shelter, a woman fell in a parking lot. The amateur on site chose to summon a Red Cross vehicle; that turned out to be a good choice and everything came out okay. Had it not, the amateur would likely have been liable because he didn't leave the decision to the shelter director, a public employee.

The Nashua, NH Amateur Radio Club is a very active, public-spirited group with 200 members. Its liability policy consumes 15 to 20% of its annual budget.

Another NH club, Keasarge, disbanded because its 15 members couldn't afford liability insurance.

May 26, 1988

The Honorable John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

On behalf of the American Diabetes Association (ADA), which represents the interests of over 11 million Americans with diabetes, I am writing to express our strong endorsement for S. 929, "The Volunteer Protection Act."

Volunteers are the lifeblood of the American Diabetes Association. At the national level, and at our 55 state affiliate associations and 800 chapters, volunteers serve in leadership positions on boards of directors and on numerous committees including fund raising, professional and patient education, youth services, and government relations committees.

The leadership role you have adopted as a champion for the cause of protection of volunteers from exposure to civil liability is greatly appreciated by the voluntary agency community in general and the ADA in particular. We look forward to working with you to assist you in your efforts to ensure passage of this important legislation.

Sincerely,

Edwin Bransome

Edwin D. Bransome, Jr., M.D.
Chairperson
Committee on Government Relations

EDB:cdw

cc: The Honorable Howell Heflin
Chairman
Subcommittee on Courts and Administrative Practice

1988 MAY 29 AM 12:55

Since 1906
SERVICE AND TRAINING TO OVERCOME VISUAL PROBLEMS

SIGHT CENTER
THE CLEVELAND SOCIETY FOR THE BLIND
1909 East 101st Street • P.O. Box 1988 • Cleveland, Ohio 44106
(216) 791-8118

May 24, 1988

Senator John Melcher
United States Senate
Washington, D.C. 20510

Dear Senator Melcher:

I am writing on behalf of The Cleveland Society for the Blind to express support of S.929, the 1988 Volunteer Protection Act.

Providing services for visually impaired and blind children and adults since 1906, The Cleveland Society for the Blind utilizes the talents and skills of more than 2,000 volunteers.

One of our greatest needs for clients is volunteer drivers. Transportation to and from medical and social service appointments presents difficulties for many visually impaired people. Visually impaired people may not have friends or family available to drive them to appointments. Many individuals do not live on or near bus lines, and special door-to-door public transportation for handicapped people is limited and sometimes unreliable.

Over the past several years, the number of active volunteer drivers has decreased. We believe our inability to recruit new drivers is specifically a result of fears regarding liability.

Unless there is a change in liability coverage for volunteers, we do not expect to see an increase in volunteer drivers. This inability to provide transportation for clients puts blind and visually impaired individuals at risk and limits necessary enhancement in the quality of lives.

The clients served by The Cleveland Society for the Blind will be directly affected by passage of the 1988 Volunteer Protection Act. The Cleveland Society for the Blind urges the Senate's full support of this bill.

Sincerely yours,

Michael E Grady

Michael E. Grady
Executive Director

YWCA

YOUNG WOMEN'S CHRISTIAN ASSOCIATION
1130 WEST BROADWAY MISSOULA, MONTANA 59802 (406) 543-6691

MAY 19 AM 12: 52

Tana Mullendore,
President
Sheila Callahan,
1st Vice President
Julia Jones,
2nd Vice President
Judith Johnson,
Treasurer
Cynthia Reimers,
Recording Secretary
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Hope Radford
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Teri Peterson
Wendy Susott
Ellen Woolley
Honorary Board Members
Marjorie Jennings
Beatrice Sletten
Executive Director
Sharon Johnson

24 May 1988

Senator John Melcher
730 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Melcher:

I am writing in support of S. 929, the Volunteer Protection Act. As volunteer coordinator for the YWCA Battered Women's Shelter, I realize how important such a bill is if we are to maintain quality volunteers within the Shelter.

As a non-profit social services agency we depend heavily on volunteers to fill many roles within the Shelter. Before being allowed to work volunteers are required to attend a 30-hour training session, and their skills are continually being monitored and updated through staff supervision and monthly inservice meetings. Our volunteers are well trained and consistently act in a professional manner.

In order to maintain this level of commitment and professionalism in this age of escalating insurance costs and lawsuits, a bill such as yours is crucial. Without this protection, volunteers feel they are at risk and may be unwilling to continue to provide quality services, thus increasing the amount of tax dollars needed to support agencies such as ours.

On behalf of the YWCA Battered Women's Shelter, I commend you for sponsoring this act, and hope to see it passed. Please keep me informed and let me know if there is anything further our agency can do to support your efforts.

Sincerely,

22041

Carla Pozema, Volunteer Coordinator
YWCA Battered Women's Shelter

A UNITED WAY AGENCY

AAMFT

American Association for Marriage and Family Therapy

May 26, 1988

Senator John Melcher
730 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Melcher:

As the Executive Director of the American Association for Marriage and Family Therapy (AAMFT), I am writing to express support for the Volunteer Protection Act, S. 929, which you have introduced.

Founded in 1942, AAMFT is the national professional association of qualified practitioners of marriage and family therapy. The Association, which has nearly 15,000 members nationwide and divisions in almost every state, promotes a family-centered approach in the treatment of mental and nervous disorders.

Volunteers play a vital role in our organization. Approximately 100 of our members volunteer in a variety of capacities. They serve on the AAMFT Board of Directors and participate in the 14 other units within our governance structure. Within the context of our governance, AAMFT members function as peer reviewers regarding professional practices and ethical conduct of colleagues, as well as evaluating professional training to determine the appropriateness of their credentials for membership. AAMFT members also volunteer as evaluators of graduate degree and post-degree institute educational programs.

AAMFT volunteers serve in good faith according to carefully established procedures. It is unconscionable that individuals who volunteer for service in professional associations such as AAMFT should suffer liability fears as a result of their decision to give of themselves for the good of their profession or their community.

With cutbacks in federal programs during the 1980s, volunteers have become more crucial to our society than ever before. Volunteers certainly play an extremely important role in our association.

Again, the American Association for Marriage and Family Therapy commends you for your efforts to address this important issue and supports the Volunteer Protection Act, S. 929.

Sincerely,

Mark R. Ginsberg, Ph.D.
Executive Director

1717 K Street, N.W. • Suite 407 • Washington, D.C. 20006 • (202) 429-1825

PRISON
FELLOWSHIP
MINISTRIES
P.O. Box 17500
Washington, D.C. 20041-0500
(703) 478-0100

May 26, 1988

Honorable John Melcher
United States Senate
Committee on the Judiciary
Subcommittee on Courts and Administrative Practice
223 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Melcher:

Thank you for this opportunity to include in the record my comments on behalf of Prison Fellowship Ministries in support of S. 929, the "Volunteer Protection Act"

Prison Fellowship Ministries, founded in 1976, serves inmates, ex-prisoners and their families through in-prison teaching, pre-release counseling, and family assistance. During 1987, our organization provided services to more than 60,000 inmates and 57,000 family members. Through volunteer task forces in several states, we also assist public officials in addressing the serious problems of overcrowding and recidivism in the criminal justice system.

Volunteers are truly the backbone of our work, with over 24,000 on our active roster. Our nation is facing an unprecedented crisis in its criminal justice system -- and Prison Fellowship volunteers are one of the largest groups of citizens donating their time to help solve this problem.

As a former member of Congress, governor of Minnesota and president of Prison Fellowship Ministries, I understand the vital contributions volunteers can make. They are an important national resource.

At Prison Fellowship, we have noticed that many volunteers are increasingly concerned about offering their services, lest they be sued if something goes wrong. For example:

> Our recruitment of volunteers to transport children to visit their incarcerated mothers, in the New York City area, was hampered by liability concerns.
>
> Prospective members of our volunteer board of directors have voiced concerns over possible personal liability for their actions as board members.
>
> Inmates who volunteer for community service projects administered by Prison Fellowship are faced with personal liability for on-site accidents.

Volunteers comprise the lifeblood of organizations, such as Prison Fellowship, which are addressing important social issues.

Sincerely yours,

Al

Albert H. Quie
President

Electronic Industries Association

Peter F. McCloskey
President

May 27, 1988

Honorable John Melcher
730 Hart Senate Office Building
United States Senate
Washington, D. C. 20510

Dear Senator Melcher:

On behalf of the Electronic Industries Association, I want to commend you for your leadership in sponsoring S. 929, the "Volunteer Protection Act". We are pleased to support this important legislation and look forward to working with you in securing its passage.

Many vital national services are provided through volunteer organizations at a cost far below what taxpayers would have to pay for similar government activities. In virtually every walk of American life, individuals have banded together on a volunteer basis to pursue worthwhile civic, charitable or professional goals which add to the quality of life for all our citizens. It would be a great disservice to allow the nation's liability crisis to chill future volunteer activities. Positive Congressional action will ensure that this does not happen.

As you know, EIA has worked hard to address various liability problems confronting our members. With over 1,000 member companies representing all facets of the U. S. electronics industry, EIA members participate in a wide-range of activities which depend upon a strong network of volunteers. Your leadership will help make certain that these and other important volunteer efforts continue.

Sincerely,

PFM:kcr

2001 Eye Street, N.W. · Washington, D.C. 20006 · (202) 457-4900 · TWX: 710-822-0148

Senator HEFLIN. Thank you, Senator Melcher.

Senator Thurmond, do you have any questions?

Senator THURMOND. Senator, you are a big-hearted man, you are kind and considerate. And I am very sympathetic to these volunteers. I think we ought to have more of them. They render a great service. But I believe the answer is to go back to the legislature of Montana and get them to act just like Illinois acted in their State, and the other States could act.

I think to have the Federal Government go into this field, it seems to me, is unnecessary and could be very questionable as to the constitutionality of it.

Thank you very much.

Senator MELCHER. Thank you, Senator.

Senator HEFLIN. Thank you, Senator Melcher. Your written statement will be entered into the record.

Senator Grassley is unable to be here, and his opening statement will be entered into the record.

[The prepared statement of Senator Grassley follows:]

STATEMENT OF SENATOR CHARLES E. GRASSLEY
ON THE
VOLUNTEER PROTECTION ACT
S. 929

SENATE JUDICIARY SUBCOMMITTEE ON COURTS
AND ADMINISTRATIVE PRACTICE
MAY 20, 1988

....

I WANT TO THANK YOU, MR CHAIRMAN, FOR HOLDING THIS HEARING ON THE VOLUNTEER PROTECTION ACT.

VOLUNTEERS ARE AN ESSENTIAL PART OF OUR COUNTRY'S HERITAGE.

WE MUST KEEP THE VOLUNTEER SPIRIT ALIVE IN AMERICA, ESPECIALLY DURING THESE TIMES OF BUDGETARY RESTRICTIONS.

THE TYPES OF ORGANIZATIONS THIS ACT IS INTENDED TO HELP ARE APPARENTLY HAVING A PROBLEM OBTAINING AFFORDABLE LIABILITY INSURANCE, OR OBTAINING ANY LIABILITY INSURANCE AT ALL.

THESE ORGANIZATIONS CONTEND THAT THE DIFFICULTY -- OR THE LACK OF OPPORTUNITY -- IN OBTAINING LIABILITY INSURANCE, IS AFFECTING THE WILLINGNESS OF VOLUNTEERS TO SERVE ON BOARDS AND COMMITTEES.

SOME ORGANIZATIONS BELIEVE THAT THEIR VOLUNTEERS ARE BEING SUED EVEN WHEN THEY ARE ONLY REMOTELY CONNECTED TO A CAUSE OF ACTION; OR THEY BELIEVE THAT SOME WEALTHY VOLUNTEERS ARE BEING TARGETED BECAUSE THEY PROVIDE SOME PLAINTIFFS WITH A "DEEP POCKET".

THESE ORGANIZATIONS ARE ASKING THE CONGRESS TO TAKE STEPS SIMILAR TO THOSE TAKEN BY MANY STATES -- INCLUDING MY STATE OF IOWA -- BY ENACTING LEGISLATION TO PROTECT VOLUNTEERS.

THEY WANT TO REDUCE THE EXPOSURE OF THEIR VOLUNTEERS TO LAWSUITS -- AND THE EXPOSURE OF THEIR ORGANIZATIONS TO LARGE INSURANCE PREMIUMS AND POTENTIALLY LARGE DAMAGE AWARDS.

UNDER THE PROPOSED VOLUNTEER PROTECTION ACT (S. 929, BY SENATOR MELCHER AND H.R. 911, BY REPRESENTATIVE PORTER) THOSE WHO VOLUNTEER FOR NON-PROFIT ORGANIZATIONS OR GOVERNMENTAL ENTITIES WOULD BE IMMUNE FROM LIABILITY IF THE VOLUNTEER WAS ACTING IN GOOD FAITH AND WITHIN THE SCOPE OF HIS OR HER FUNCTIONS AND DUTIES WITH THE ORGANIZATION OR ENTITY AND IF ANY DAMAGE OR INJURY WAS NOT CAUSED BY WILLFUL AND WANTON MISCONDUCT.

A STATE'S SOCIAL SECURITY BLOCK GRANT ALLOTMENT WOULD BE REDUCED BY ONE PERCENT FOR THE NEXT FISCAL YEAR IF THE SECRETATY OF HEALTH AND HUMAN SERVICES CERTIFIED THAT THE STATE, BY FAILING TO ENACT SUCH LEGISLATION, WAS NOT IN SUBSTANTIAL COMPLIANCE WITH THE FEDERAL VOLUNTEER PROTECTION ACT.

VOLUNTEER ORGANIZATIONS DO NOT WANT TO EXEMPT THEIR VOLUNTEERS FROM ACCOUNTABILITY FOR THEIR ACTIONS -- THEY SUPPORT THE MAINTENANCE OF THE RIGHT TO SUE AN INDIVIDUAL VOLUNTEER FOR WILLFUL AND WANTON MISCONDUCT OR FOR ACTIONS OUTSIDE THE SCOPE OF HIS OR HER DUTIES OR THE RIGHT TO SUE AN ORGANIZATION FOR NEGLIGENCE.

HOWEVER, THE OPPOSITION TO THIS LEGISLATION MAINTAINS THAT THE REAL CULPRIT IS NOT LAWSUITS, BUT THE PREMIUM RATE STRUCTURE FOR LIABILITY INSURANCE -- WHICH HAS BEEN BENEFICIAL TO THE PROFITABILTY OF THE INSURANCE INDUSTRY.

AS WE ALL KNOW, MR. CHAIRMAN, THE ISSUES RAISED BY THIS

LEGISLATION ARE A PART OF THE ONGOING NATIONAL DEBATE ON THE EXTENT OF THE "LAWSUIT AND/OR LIABILITY CRISIS", AND ITS EFFECT ON THE AWARD OF DAMAGES IN TORT CASES.

WHATEVER THE OUTCOME OF THE DEBATE, APPARENTLY FOR THE TIME BEING, MANY VOLUNTEER ORGANIZATIONS ARE REEVALUATING THEIR SERVICES IN LIGHT OF WHAT THEY GENUINELY BELIEVE TO BE A THREAT TO THEIR OPERATIONS.

I HOPE OUR HEARING TODAY WILL PROVIDE US SOME NEEDED GUIDANCE REGARDING THE ISSUES RAISED BY THE PROPONENTS AND OPPONENTS OF THIS LEGISLATION.

Senator THURMOND. We will ask our next panel to come forward—Mr. MacDougall, Mr. Able, Dr. Hale and Mr. Walker.

I have been informed that at 11:30 we will start on the Senate floor a 15-minute rollcall vote, to be followed by four rollcall votes, to which there will be 10 minutes, which will be nearly an hour. So maybe we can move forward with this.

I would say that each of your written statements will be entered into the record in full, and if you will attempt to summarize this as rapidly as you can.

Mr. MacDougall?

PANEL CONSISTING OF GORDON P. MacDOUGALL, EXECUTIVE DIRECTOR, NATIONAL COALITION FOR VOLUNTEER PROTECTION; EDWARD H. ABLE, JR., PRESIDENT, THE AMERICAN ASSOCIATION OF MUSEUMS, AMERICAN SOCIETY OF ASSOCIATION EXECUTIVES; DR. CREIGHTON J. HALE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LITTLE LEAGUE BASEBALL, INC., AND KEVIN WALKER, OPERATIONS LEADER, RIVERSIDE MOUNTAIN RESCUE UNIT, RIVERSIDE, CA

STATEMENT OF GORDON P. MacDOUGALL

Mr. MACDOUGALL. Mr. Chairman, thank you for the opportunity to testify today and for bringing this group together. I will ask the chairman's permission to enter my written statement into the record, and I'll be very brief.

There really are two reasons we are here. The first is, of course, that volunteers are withholding their services. The second is that existing State laws are discriminatory and inconsistent; they create a class system among volunteers by protecting volunteer leaders and not direct service volunteers, by protecting youth sports coaches and not other direct service volunteers. We have got to have a comprehensive, consistent solution to this problem.

This legislation is the correct solution, we firmly believe. There has been a list of organizations that support this legislation entered into the record. We hope that the committee will take a look at that list. We also hope that the subcommittee will act favorably on this legislation and report a bill to the full committee, even if the subcommittee makes some adjustments on the risk management side and some adjustments to the trigger mechanism.

We very much appreciate the committee's concern for the plight of volunteers facing lawsuits. I understand we are under time constraints so I will move on to Mr. Able.

Thank you.

[Mr. MacDougall submitted the following material for the record:]

TESTIMONY OF

GORDON P. MACDOUGALL

EXECUTIVE DIRECTOR

NATIONAL COALITION FOR VOLUNTEER PROTECTION

BEFORE THE

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

MAY 20, 1988

EXECUTIVE SUMMARY:

The National Coalition for Volunteer Protection was organized in September, 1987 to coordinate and generate support for S. 929 and H.R. 911, the Volunteer Protection Act. The Coalition is now comprised of over 200 national, state and local volunteer-dependent groups. These groups collectively utilize **tens of millions** of volunteers.

The Coalition and its members actively support the Volunteer Protection Act for two reasons. First, volunteers are withholding their services due to liability concerns. This withholding of services is causing severe damage to nonprofit organizations, municipalities and other volunteer-dependent groups. Significant research has been conducted which substantiates this contention.

Second, existing state volunteer protection laws are patchwork, inconsistent and discriminatory. Because of the lack of consistency of state laws, volunteer leaders in many states are covered by limited immunity while direct service volunteers remain exposed. Youth sports volunteers are covered in some states and volunteers of charitable groups are covered in others. This inconsistency is creating a **dangerous class system** among volunteers.

In addition to creating a class system among volunteers, **substantially** different civil justice standards apply to volunteers conducting identical services for the same organization in different states. This inconsistency hinders efforts by national volunteer-dependent organizations to accurately advise their chapters on volunteer liability and risk-management guidelines.

There is clearly a great need for federal legislation to prompt all states to enact consistent but comprehensive legislation to reduce liability exposure for volunteers. The pending legislation promotes modest changes in civil justice standards: the Coalition supports an amendment to the bill to encourage states to promote sound risk-management practices among volunteer-dependent organizations. S. 929 meets the Coalition's criteria that federal legislation enable the states to retain their traditional responsibility for civil justice reform and insurance and risk-management regulation.

The National Coalition for Volunteer Protection represents organizations in every category of risk: from firefighters to food donors, from chemists to credit unions. Coalition members are volunteers who form church groups, counsel drug addicts and establish shelters for the homeless. These individuals deserve our attention and support. The Coalition hopes that this Committee will address those volunteer's needs by reporting S. 929 to the full Senate Judiciary Committee as soon as possible.

PAGE I.

Mr. Chairman, I'd like to start this morning by thanking you for giving us the opportunity to address this critical issue.

This issue is critical because volunteers are withholding their services and because state volunteer protection laws are dangerously inconsistent and discriminatory. But this issue is also critical because the victims are citizens who are providing uncompensated services to society. These victims are volunteers who serve to house and feed the homeless, to treat and support the elderly and to clothe and care for the poor. These victims provide services which fill large gaps in government and private programs for the truly needy.

It's no coincidence that the emergence of this issue has paralleled massive increases in both the size of litigation claims and the cost of liability insurance. As the size of claims has risen--along with the number of defendants named in each lawsuit--insurers have pointed their fingers at the tort system. As liability insurance premiums have risen, plaintiff's attorneys have been screaming for federal regulation of the insurance industry.

Incredible damage has been caused by these two groups not owning up to their share of the problem. By launching massive government and public relations campaigns blaming one another for this crisis, they've tipped the delicate balance between an individual's incentive to serve as a volunteer and an individual's interest in protection from liability exposure. The net result has been fewer volunteers.

I liken these competing government and public relations campaigns to a war between lobbying superpowers, between organizations at opposite ends of the public policy spectrum. The primary casualty of this stalemated public policy battle has been volunteer participation in America. This legislation serves to revive that casualty; it encourages states to force both groups to sacrifice, to compromise on behalf of our country's volunteers.

The National Coalition for Volunteer Protection is a relatively tiny player in this megaton policy battle. We are funded at a minimal level by volunteer-dependent organizations and corporations with a social conscience. We don't have the resources to compete with the trial lawyers or the insurance industry, but we do have the support of millions of American volunteers. We know we can't win this battle with money, so we are working to win through grassroots persistence and volunteers who vote.

Many states have acted to both protect volunteers from being named in negligence lawsuits and reduce liability insurance costs for nonprofits. Over forty states have passed laws limiting the liability of directors and officers of nonprofit organizations. About fifteen states have properly instituted nonprofit risk-management programs and/or risk pools to stabilize liability insurance premiums.

Some of these state laws, though, are dangerously limited. Indiana's law names fraternity and sorority volunteers, the Michigan law names ski patrol volunteers, and the Wyoming law names hazardous waste clean-up volunteers and amateur rodeo volunteers. While we recognize that each state has different volunteer needs, we firmly support a federal effort to design consistent and comprehensive guidelines for state volunteer liability standards. This problem is not being corrected, rather it is being exacerbated, by states providing limited liability for select groups of volunteers.

We also recognize that this legislation is not a panacea. If passed, however, S. 929 should help volunteer organizations to promote consistent state standards and should help to ameliorate volunteer's liability fears--fears which have resulted in fewer hospital volunteers, fewer volunteer coaches, and fewer volunteer drug counselors.

Little quantitative data exists linking tort reform and insurance rates. Nevertheless, if this bill is enacted and states comply, the goal of reducing exposure for volunteers, through external and internal reforms, will be achieved. Reduced exposure should be in everyone's best interest, including the plaintiff's bar and the insurance industry.

Through this legislation the two groups which have contributed to this problem, and which have to date blocked any meaningful, comprehensive solution, will be encouraged to sit down at each state capitol and compromise. It will help stop the posturing and stop the misinformation. It will require these groups to each offer a pint of blood, blood which can be used to revitalize the volunter spirit in this country.

It's important for us not to condemn all trial lawyers and all insurers. There are insurance companies which support this legislation even though it may mean lost market share. There are trial lawyers which support this legislation regardless of the fact that their national trade association fervently opposes the bill.

But we need a vehicle to bring these groups together to negotiate a solution to the problems of volunteer liability. The Volunteer Protection Act, as amended to include risk-management provisions, will serve as that vehicle if this Subcommittee will report a bill to the full Senate Judiciary Committee.

Mr. Chairman, Subcomittee members, it's time that we stop posturing over who's to blame and that we start designing careful and comprehensive solutions to the volunteer liability crisis. It's time we say "no" to the powerful political forces and say "yes" to those on the front lines, our country's volunteers.

The National Coalition for Volunteer Protection was created to help promote federal legislation to address the volunteer liability issue. We look forward to working with the members of this Committee to complete the design of a balanced and fair bill. We also look forward to working with this Committee to give a jump start to this important legislation.

Responses to Questions from Senator Heflin:

1) According to a Gallup survey released in January, 1988, eighteen percent of all volunteers, almost one in five, have withheld their services due to liability concerns. In addition, your Subcommittee received written testimony from approximately 75 national volunteer-dependant organizations representing tens of millions of volunteers. That testimony clearly states that these organizations are experienceing difficulty recruiting and retaining quality volunteers as a result of liability concerns. In our judgement, this is a significant national problem which warrants a federal legislative response.

2) A majority of states have passed some form of a volunteer protection law limiting the liability of select groups of volunteers. Unfortunately, because state legislatures are greatly influenced by lobby groups representing plaintiffs, existing laws are inconsistent and incomplete. Many state laws are passed in reaction to a specific legal case against a volunteer. These laws unfairly discriminate against all other volunteers who share the same level of liability exposure. Approximately 40 states have passed laws either limiting the liability of, (or enabling corporate indeminfication of), volunteer directors and officers of nonprofit organizations. Very few of these laws cover directors and officers of all nonprofit organizations, and most of these laws do not address the need to provide similar protections for direct service volunteers. A formal list of existing state statutes is available through the National Conference of State Legislatures.

3) Congress should advise states that national volunteer-dependant organizations are experiencing difficulty in recruiting and retaining quality volunteers as well as in training volunteers to understand their legal liabilities. A PTA volunteer in California is subjected to a different standard of liability than a PTA volunteer in New York, even when performing an identical task. Under these circumstances, it is impossible for the National PTA to accurately assess insurance requirements for their volunteers and it is costly and difficult to notify volunteers of their legal liabilities for services performed on behalf of the National organization. While the National Coalition for Volunteer Protection understands the delicate balance between state and federal responsibility, we feel that this important matter warrants federal action to offer incentives for states to enact consistenet and comprehensive volunteer protection laws.

4) No. There is clearly a need for improved risk management and training among nonprofit organizations. But risk management alone will not solve the problems of dangerously varying state laws. Risk management will not address the need to impose consistent liability standards to all volunteers.

Page 2

5) No. It would be beneficial if the Committee would request this information from the Insurance Services Organization in New York. Our Coalition has unsuccessfully attempted to secure this information. Regardless of the numbers and sizes of claims filed against volunteers, the volunteer community is being damaged by high profile claims and by escalating insurance costs. After certain insurers and the Association of Trial Layers of America indicated their opposition to this legislation, our Coalition encouraged them to come forward with alternative proposals addressing liability problems faced by nonprofit organizations. Unfortunately, neither of these groups offered an alternative proposal to S. 929.

6) In my judgement, yes.

7) Yes.

8) While little quantitative data exists linking limitations on liability with reduced insurance rates, the liability insurance market for nonprofits will likely soften for nonprofits once all states elect to pass volunteer protection laws. Some insurance companies have indicated that if S. 929 is passed and states comply, that nonprofits will benefit because they will need slighty reduced coverage, (coverage for "willful and wanton" acts and for actions outside the cope of volunteer's duty will still need to be maintained.) In addition to S. 929, however, there are other actions which could help reduce isurance costs for nonprofits. These include group purchsing arrangements and structured risk-management programs.

9) No. The bill should be amended to enable states to exempt volunteers operating a motor vehicle from the limited libility.

10) No. This bill is only one of many, solutions, all of which must be pursued, to the "preception" problem. The "perception" problem must also be addresssed through improved public education concerning volunteer laibility and improved risk management and training for volunteers. Without this bill, however, it will be impossible to launch a national public education program on volunteer liability because state laws will remain seriously inconsistent. Without passage of this bill it will also be difficult to promote standard risk management and training programns for all volunteers.

Responses To Questions By Senator Thurmond:

1) If a state fails to act, depending on the population of the state between $50,000 and $2.7 million would be reallocated to states which have passed the legislation. The impact of these reallocations would be minimal; the enforcement measure is largely symbolic. In my personal judgement, "substantial compliance" should include any action which results in achieving the goal of limiting all volunteer's liability exposure through adjustments to legal standards of conduct, indemnification, insurance coverage or risk-management, or a combination of those actions. It would ultimatly be the Secretary's decision regarding how to specifically interpret this term.

2) This bill would not enable professionals such as doctors and lawyers to "escape" liability for malpractice by forming a nonprofit organization. The only instance in which a professional's liability may be limited would be when that professional is serving in a voluntary, non-compensated capacity. Most states have already passed laws limiting the liability of professionals offering volunteer or emergency services. I do not know of any instance in which these "good samaritan" laws have been used by a professional to "escape" liability.

3) The bill which I referred to in my prepared statement is a draft which I entered into the record at the hearing. This draft does offer states "guidelines" to address the issue. The draft allows states the flexibility to impose risk-management controls on volunteer-dependant groups as a condition of limited liability. The draft also allows states to change insurance regulations to achieve the ultimate goal of reducing volunteer's liability exposure. It is important that states have the option to address this issue through various means. I believe that the draft entered into the record provides states with the necessary flexibility to address this problem in a balanced and comprehensive fashion. This legislation will not completely solve the problem of volunteer liability, but it will contribute significantly to solving the many problems associated with volunteer liability exposure.

4) The National PTA provided written testimony to the Committee. I refer you to that testimony.

Responses to Questions by Senator Grassley:

1) A very minor "sanction", yes. The "sanction" is intended to serve as a symbolic penalty rather than a substantive one.

2) I would not call it a "denial" of Social Services Block Grants Funds, rather I would call it a "reallocation." Social Service Block Grant funding (Title XX) was chosen to serve as the enforcement mechanism in this bill because Title XX funds are used by state and local governments to encourage volunteer participation in human service programs. States which have not passed volunteer protection laws are impaired in their ability to attract the quantity and quality of volunteers on which these human service programs rely. Therefore, those states which have not passed comprehensive volunteer protection laws are not spending Title XX funds as efficiently as those states which have passed such laws. The enforcement mechanism is designed to reward states which have passed these laws and are using Title XX funds most effectively. The mechanism also serves to penalize states, in a minor way, which have not passed such laws. The "trigger" mechanism amounts to one percent of a state's social service block grant funding which ranges, depending on the population of the state, between $50,000 to $2.7 million. This amount is miniscule in relation state budgets for volunteer-dependant human service programs.

3) Same as above

4) The term "substantial compliance" would allow the Secretary to determine whether modified state laws result in a state achieving the objectives of the bill--reduced liability exposure for all volunteers. For instance, if a state law allows all nonprofit organizations to indemnify all volunteers, and the same law creatively addresses the insurance and liability exposure needs of smaller, less capitolized nonprofit groups, then the Secretary has the option to determine whether that state law is consistent with the goals of S. 929, even theough the law is not an exact duplication of S. 929. The term "substantial compliance" provides the Secretary with the necessary flexibility to promote consistency in state laws while providing states with the ability to craft volunteer protection statutes which meet their specific, slightly differing needs.

5) This law is necessary for the reasons outlined in my testimony presented to the Committee and the testimony submitted by over 75 national nonprofits groups. I refer you to that testimony which I believe makes a strong case for federal action of this issue. If the Committee agrees with our case, and the need for federal legislation has been substantiated and accepted, then the Committee must act to promote legislation which helps solve the problems associated with volunteer liability, the problems outlined in our testimony. They must work twoard a solution which limits federal encroachment on state's rights, and a

5) Continued--------- solution which provides state legsialtures with the necessary flexibility to address their specific needs. We believe that the revised version of S. 929 addresses each of those considerations.

6) I am familiar with the Iowa act, and I wish that all states had acts similar to that exemplary law.

7) Approximately fifteen states have laws as consistent and comprehensive as the Iowa law. Many other states have laws which are far less consistent and comprehensive.

8) Yes, state legislatures, rather than Congress, know what is best for individual states. Congress, however, is charged with knowing what is in the national interest. We hope that Congress recognizes the importance of the goal of consistency in state volunteer protection laws. Inconsistency among state laws is damaging the operations of America's valuable national nonprofit organizations. Volunteers from these organizations are being subjected to differing liability standards and differing insurance requirements throughout the country. Only through federal guidance and encouragement can we achieve consistent state laws to promote voluntarism equitably throughout the Unites States. We are not asking for federal pre-emption, we are simply asking Congress to step in and help encourage states to address this problem in a more consistent and equitable fashion.

Senator HEFLIN. Mr. Able?

STATEMENT OF EDWARD H. ABLE, JR.

Mr. ABLE. Mr. Chairman and members of the committee, Senator Thurmond, my name is Ed Able, and I appear on behalf of a variety of organizations. Principally, I am the executive director of the American Association of Museums, an organization of over 10,000 members which includes individuals, including the volunteers, and over 2,200 museums.

As you probably know, volunteers are used extensively in museums and perform critical services. I would have to say that without those volunteers, our museum doors would probably have to close or drastically reduce the services that we provide for some 500 million visits to museums on an annual basis.

I am also here on behalf of the American Society of Association Executives, an organization representing more than 16,000 individuals from more than 8,000 national, local, State, trade and professional associations. As a member of ASAE's board and a 17-year veteran of association management, I can report that these associations are totally dependent upon volunteers to serve on their boards and committees and to perform direct service functions that benefit the American economy, business, professions, and the public at-large.

Incidentally, I also serve as a volunteer myself on the board of directors of the National Humanities Alliance, the U.S. Committee for a World Heritage, Environmental Images, the American Institute of Architects Student Advisory Board, and the No. 2 elected position in my church.

I would like to commend Senator Melcher and Congressman Porter for their efforts on behalf of America's volunteers and this committee for conducting these hearings.

My testimony is going to be fairly brief; the full testimony has been submitted for the record.

I want to concentrate just briefly on two specific and separate studies. Each one offers insight into the extent of the volunteer liability issue. With your permission, Mr. Chairman, I have complete copies of both those studies, and we will submit them for the record.

The first study was conducted by Peat Marwick Main and Company, one of the most well-established and respected accounting and research firms. The study was primarily devoted to determining the impact of the liability crisis on volunteer participation among directors and officers of nonprofit organizations. With the response of more than 2,500 nonprofit executives, the findings demonstrate a widespread concern about the liability crisis. Seventy-nine percent of the executives surveyed believed that the problem was having a negative effect on the quality of governance in nonprofit organizations. Thirty-eight percent of the executives surveyed considered the problem as a crisis.

Within this group were 678 museum executives who participated, the largest fraction of the survey respondents; 69 percent saw the liability problem as a possibly growing into a crisis, and 14 percent believed the crisis is already here.

Now, regardless of whether the volunteer liability situation is considered a crisis, or just simply one hell of a problem, the results of the study show that the situation merits attention and firm action as soon as possible.

The second study was released in January of 1988. This study, "The Liability Crisis and the Use of Volunteers for Nonprofit Associations," was sponsored by the American Society of Association Executives, funded by the Gannett Foundation, and performed by the well-respected Gallup organization. While this study also concentrated on directors' and officers' liability, some revealing data was obtained on the effect of this crisis on direct service volunteers. According to the study, approximately 1 in 10 nonprofit organizations have experienced the resignation of a volunteer due to liability concerns. One in six volunteers report withholding their services due to fear of exposure.

These two studies have revealed the extent to which the threat of law suits and the prohibitive cost of liability insurance are negatively affecting volunteer participation in charitable organizations and associations. I would add parenthetically that although many of our larger associations and museums can cope with this problem through insured programs—they do so, at great cost.

By and large, though, the problem is more with the smaller organizations—our small museums, our small associations—and it is those for whom I have the greatest concern.

Without the Volunteer Protection Act, volunteers will continue to withhold their services, nonprofit organizations will continue having difficulty attracting and retaining volunteers, and many important services to this country and to the American people will continue to suffer.

On behalf of those volunteers and organizations, I thank you for the opportunity to testify today and welcome any questions you have.

Thank you.

[Mr. Able submitted the following material for the record:]

American
Association
of
Museums

Statement of

Edward H. Able, Jr.

on behalf of

The American Association of Museums

and

American Society of Association Executives

on

S. 929

The Volunteer Protection Act

before

The Subcommittee on Courts and Administration Practice

Committee on Judiciary

United States Senate

May 20, 1988

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Northwest
Washington DC
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Mr. Chairman and distinguished committee members, my name is Edward H. Able, Jr. and I appear before this Committee on behalf of a variety of organizations. Principally, I am the Executive Director of the American Association of Museums (AAM), an organization of over 10,000 members, including 8,000 museum professionals and trustees and over 2,200 museums of all types. Volunteers are used extensively in museums, performing many critical services; according to the American Association of Museum Volunteers, more than 70,000 active volunteers serve in the nation's museums, and the number grows steadily each year. In addition, an estimated 65,000 individuals serve as board members in museums across the country.

I am also here on behalf of the American Society of Association Executives (ASAE), an organization representing more than 16,000 individuals from more than 8,000 national, state and local trade and professional associations. As a member of ASAE's board of directors, I can report that these associations are also totally dependent upon volunteers to serve on their boards and committees and to perform direct service functions. Because the AAM and ASAE both represent organizations that rely so heavily on volunteers, they are founding members of the National Coalition for Volunteer Protection, a coalition formed in 1987 by over 100 volunteer-dependent organizations from across the country to enhance awareness of the importance of and threats to voluntarism in America.

In addition to my position at the AAM and ASAE, I also serve on the board of directors of the National Humanities Alliance, the U.S. Committee for the World Heritage, Environmental Images and the American Institute of Architects Student Advisory Board. I am also a Junior Warden at the Church of the

Epiphany here in Washington. In these various volunteer positions I have handled both management and direct service responsibilities. These responsibilities have ranged from making major corporate policy decisions to serving on volunteer committees that provide direct services to nonprofit organizations.

I would like to begin by thanking the Committee for conducting this hearing on the critical issue of volunteer protection and on S. 929, the Volunteer Protection Act. This Committee must address a number of important issues, and I am pleased that the Committee has recognized the degree to which voluntarism has suffered due to liability concerns.

I am going to focus my testimony on the effect that the liability crisis has had on volunteer participation in charitable organizations and trade associations, groups with the IRS designation of 501(c)(3), (c)(4), and (c)(6). Two separate, major studies have been conducted on this issue during the past two years. Each one offers insight into the extent of the volunteer liability issue.

The first study was conducted by Peat Marwick Main & Company, an established accounting and research firm. In 1986, Peat Marwick helped to create the CEO/Peat Marwick Panel on Directors' and Officers' Liability with several other national organizations, including the AAM, the American Symphony Orchestra League, the National Association of Corporate Directors, the Association of Governing Boards of Universities and Colleges, Public Risk Insurance Management Association, and Indepenedent Sector, an organization which includes the nation's leading voluntary and charitable organizations.

The Peat Marwick study was primarily devoted to determining the impact of the liability crisis on volunteer participation among directors and officers of nonprofit organizations. With the response of more than 2,500 nonprofit executives, representing a sample size larger than that usually employed in national opinion polls, the findings demonstrate a widespread concern over the liability crisis. Of the overall sample, 79% of executives surveyed believed that the problem was having a negative effect on the quality of governance in nonprofit organizations; 38% of the executives surveyed saw the problem as a crisis.

Of the 678 museum executives that participated in the survey, the largest faction of the survey respondents, 69 percent saw the liability problem as possibly growing into a crisis, and 14 percent believed it to have already reached crisis dimensions. As a result of this problem, 62 percent of the museum respondents reported an increase in their liability insurance premiums, including 27 percent citing an increase of 300 percent or more in the last renewal period.

Regardless of whether the volunteer liability situation is considered a "crisis" or simply "one helluva problem," the results of this study show that the situation merits our attention and warrants firm action.

In the museum community alone, many museums have become preoccupied with potential litigation and the problems of attracting volunteers to their institutions. Museums not only depend on volunteers to serve on their boards, but also to actively participate as volunteers in museum service programs. Volunteers are crucial to the daily operations of museums, such as serving as docents giving tours to adults, children and the handicapped, and working in museum shops, libraries, photography and publications departments. There is virtually no aspect of museum operations that does not include significant volunteer participation. For many museums and other private nonprofit cultural organizations of modest means, the burden of providing insured protection can become prohibitive by its cost; yet without adequate liability coverage, quality volunteer service can no longer be obtained. Increased liability premiums and potential volunteers' fears of liability suits are clearly jeopardizing the future of voluntarism in museums and in all types of nonprofit organizations across the nation.

The second study I would like to discuss was released in January, 1988, just four months ago. This study, "The Liability Crisis and the Use of Volunteers by Nonprofit Associations," was sponsored by the American Society of Association Executives, funded by the Gannett Foundation and performed by the Gallup Organization. While this study also concentrated on director and officers liability, some revealing data was obtained on the effect of this crisis on direct service volunteers. According to the study:

- Approximately one in ten (8%) nonprofit organizations have experienced the resignation of a volunteer due to liability concerns. If this figure were multiplied by the number of nonprofit organizations in America (600,000), then 48,000 volunteers would have been lost during the past few years strictly due to liability concerns. 48,000 is a significant number of volunteers. Remember that these volunteers resigned; resignation is a very drastic measure.

- One in six (16%) volunteers report withholding their services due to fear of exposure. If this figure is applied to the number of nonprofit groups, then as many as 100,000 American volunteers have declined to serve due to fear of exposure to lawsuits. This is an extraordinary figure as well.

This survey also highlighted the increased cost of liability insurance premiums for associations in recent years. The average reported increase in the past three years is 155%, and one in eight organizations report an increase of over 300%, roughly the equivalent of a 100% increase over 1984 rates per year.

These two studies have revealed the extent to which the threat of law suits and the prohibitive cost of liability insurance are negatively affecting volunteer participation in charitable organizations and associations. These studies, particularly the Gallup study, provide hard data demonstrating the degree to which the tax-exempt community has been damaged by the liability crisis.

This is not an imaginary problem as opponents of this legislation may suggest. This is a very real problem; a problem that is resulting in the deterioration of voluntarism in America. I know from my personal experience as a volunteer leader and a direct service volunteer that many potential volunteers choose to avoid making a personal commitment of serving nonprofit charitable organizations and associations in order to avoid personal risk.

While each of the organizations I represent wholeheartedly support S. 929, the Volunteer Protection Act, we also understand that this legislation, like any single corrective action, is not a panacea. This legislation encourages states to make very modest changes in their civil justice systems to help protect volunteers from negligence law suits. This legislation is a first step. The volunteer community must continue to institute valid risk-management programs and must continue to encourage the insurance industry to respond to the volunteer community's internal efforts to reduce exposure for volunteers.

The Volunteer Protection Act is greatly needed as part of the solution to this problem. Without legislation, volunteers will continue to withhold their services, nonprofit organizations will continue having difficulty attracting and retaining quality volunteers and many social services in America will continue to suffer. Mr Chairman, I urge you to report this bill out of your subcommittee as soon as possible. We need to get this legislation on track so that states have an incentive to address this issue.

Literally tens of millions of American volunteers and the organizations they serve are following this legislation and will be grateful when you report it from your subcommittee. On behalf of those volunteers and organizations, I thank you for the opportunity to testify today and welcome any questions you may have.

BIOGRAPHY OF
EDWARD H. ABLE, JR.

Edward H. Able, Jr. became the Executive Director of the American Association of Museums (AAM) in July 1986. He oversees the management of the Association's $3.3 million budget, working with a staff of 38 on a variety of programs and activities that promote the advancement of museums and museum professionals across the country. AAM serves a membership of over 10,000, consisting of museums of all types as well as museum professionals.

Ed Able, a Certified Association Executive (CAE), is professionally active in the American Society of Association Executives (ASAE) and the Greater Washington Society of Association Executives. In 1987 Ed began serving on ASAE's Board of Directors, and he was named as an ASAE Fellow, a peer recognition program for individuals highly regarded as leaders in the association field. He serves the association executive community through dedicated involvement in edcuation programs, conference and convention programs, and government affairs programs. He recently wrote the final chapter, "Future Issues and Opportunities," of Principles of Association Management, the major textbook on association management soon to be published by ASAE.

During his 17 years in nonprofit organization management, Ed has established an impressive record in nonprofit association management and development. Before arriving at AAM, Ed served as the Executive Vice President of the American Society of Landscape Architects (ASLA) for nine years. Ed directed the Society's growth from a $400,000 budget to one of more than $4 million with major expansion in the areas of membership, professional education, publications, technical information, government affairs, meetings and public relations.

Before his association with ASLA, Ed served in other distinguished and challenging positions. For four years he was the Assistant Director of the Resident Association Program at the Smithsonian Institution. He also worked as a Washington-based management consultant and as a staff aide to U.S. Senators Mike Mansfield and Richard B. Russell.

Ed earned an MBA from George Washington University in 1973 and also holds a B.A. in chemistry with a minor in business administration from Emory University in Atlanta, Georgia. He served in the U.S. Army Service Medical Corps from 1968 to 1971.

Ed offers an expert working knowledge of nonprofit association management and of the implications of federal tax laws as they affect nonprofits. As the recognized national expert on non-dues sources of income for associations, Ed teaches seminars for ASAE, allied societies and is a frequent presenter on other topics at ASAE conventions. He has a unique understanding and appreciation of the methods, complexities and problems in association management. His professional experience and successes put him in the forefront of this dynamic field.

Mr. Able is a member of the following additional boards:

- National Humanities Alliance
- U.S. Committee for the World Heritage
- Environmental Images
- American Institute of Architects Students Advisory Board
- Junior Warden, Church of the Epiphany

D&O

Directors' and Officers' Liability:

A Crisis in the Making

An Examination of the Scope of the Problem and Its Impact on the Quality of Governance of American Institutions

A National Survey Conducted by
Opinion Research Corporation and
Research Strategies Corporation

The Liability Problem: *A Survey of Those Directly Affected*

For well over a year, there has been growing concern in America's boardrooms about the unprecedented liability exposure now faced by directors and officers of both corporations and not-for-profit organizations. A sharp rise in the number of liability suits and spiraling insurance costs have made it increasingly difficult for officers and directors to protect themselves.

As auditors and business advisers, Peat Marwick is particularly concerned about the effect of the liability situation on the quality of governance of American institutions and on the ability of those organizations to attract independent directors to their boards.

For these reasons, steps have been taken to address the problem. In 1986 we helped create the CEO/Peat Marwick Panel on Directors' and Officers' Liability with several other national organizations:

- National Association of Corporate Directors (NACD)
- American Association of Museums
- American Symphony Orchestra League
- Association of Governing Boards of Universities and Colleges
- Independent Sector (comprising of the directors of leading charitable organizations)
- Public Risk and Insurance Management Association

To gauge the dimensions of the problem and to aid in formulating a clear, reasoned approach to its solution, Opinion Research Corporation was engaged to conduct an independent survey of those directly affected by the growing liability risk. The study, carried out in consultation with Research Strategies Corporation, surveyed chief executive officers, board members, executives, and professionals from business, government, education, and not-for-profit organizations.

This is a landmark study. It is the most comprehensive study ever undertaken on this issue. In all, a total of nearly 8,000 persons were surveyed—a sample size larger than that usually employed in national opinion polls. The response rate of over 32 percent in the aggregate was greater than normally anticipated in research of this type—a clear indication of the timeliness of this study and the heightened interest that the directors' and officers' (D&O) liability problem has engendered.

This booklet summarizes the responses of the entire sample to 13 key questions. The principal findings of the study point to widespread conviction that a crisis situation is brewing, if it is not already here, and also underscore the fact that trustees and directors in the not-for-profit sector have been slower to feel the effects of the problem than have their counterparts in the corporate and governmental sectors.

We publish this booklet with our thanks to those who took their valuable time to participate in the survey and with the hope that these findings will prove useful in the next stage of the process—achieving reform to restore fairness to a system now out of balance.

Larry D. Horner
Chairman and Chief Executive
Peat Marwick

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About the Research

Even casual followers of the business news during the last few years have noted the growing concern over the skyrocketing costs of directors' and officers' liability insurance coverage. Many organizations have been priced out of the market completely and face day-to-day concern over ruinous liability suits. Others have seen premium costs escalate to levels that were unheard of in earlier years. And there has been plenty of finger-pointing as to who is to blame: the legal system, which has awarded high payments; lawyers seeking to gain massive settlements for their clients; or insurance companies, which have watched their premium income disappear in a sea of red ink.

But just how far has concern gone? Whom do the directors of the nation's businesses, governmental organizations, and not-for-profit institutions really blame for the current state of affairs? How serious, fundamentally, is the problem, and what should be done about it? Definitive findings of how key leaders answer such questions have been unavailable in the detail and depth that could be relied upon as solid indications of what solutions are emerging.

To assess overall perception of the directors' and officers' liability problem as well as to determine how various profit and not-for-profit organizations are dealing with this problem, a survey was jointly undertaken by Research Strategies Corporation and Opinion Research Corporation. Research Strategies Corporation designed the project and is undertaking its analysis, and Opinion Research Corporation was responsible for receiving and tabulating the returns. In conjunction with the cosponsors of the survey, Peat Marwick performed the sampling and handled the mailing of the questionnaires.

A total of 2,532 persons participated in the survey, all using self-administered mail questionnaires. Interviewing was conducted between September and December 1986. The returns included:

- 569 chief executive officers (a 30 percent return rate) of the nation's largest companies
- 678 museum directors (a 36 percent return rate)
- 121 orchestra/symphony executives (a 52 percent return rate)
- 153 executives in the Independent Sector (a 46 percent return rate)
- 70 Association of Governing Boards chairpersons (a 32 percent return rate)
- 367 Association of Governing Boards university presidents (a 42 percent return rate)
- 350 hospital executives (a 24 percent return rate)
- 224 public/municipal officials (a 22 percent return rate)

The return rates in this series of interrelated surveys are more than adequate for the purposes of this project—namely, to compare the views of key constituencies and to view them in the aggregate. More details on sampling, weighting of results, and similar matters are available.

The Crisis and Its Roots

Is There a D&O Liability Crisis?

Across the board, there was a very strong consensus—92 percent of all those surveyed—that there is an incipient D&O liability crisis. Six in ten survey participants indicated that a problem exists that may grow into a crisis, and about one-third of participants responded that the problem is of crisis dimensions right now. Only 6 percent said that the issue is overblown and that no crisis exists.

The findings show that perception of the seriousness of the D&O liability situation is stronger among corporate chief executive officers than among those in not-for-profit organizations. While 43 percent of the CEOs surveyed indicated that the situation is already of crisis proportions, only 28 percent in the not-for-profit groups said that they believe the problem is that severe.

Among the not-for-profit participants, executives of museums and orchestras demonstrated the least alarm about D&O liability issues. While a substantial majority—about 85 percent of both groups—thought either that there is a problem that may grow into a crisis or that the situation is now a crisis, roughly 13 percent expressed a belief that there is no crisis and that the situation is overblown. Those who took the gravest view of the problem among the not-for-profit executives were public officials, university presidents, and chairpersons of voluntary boards.

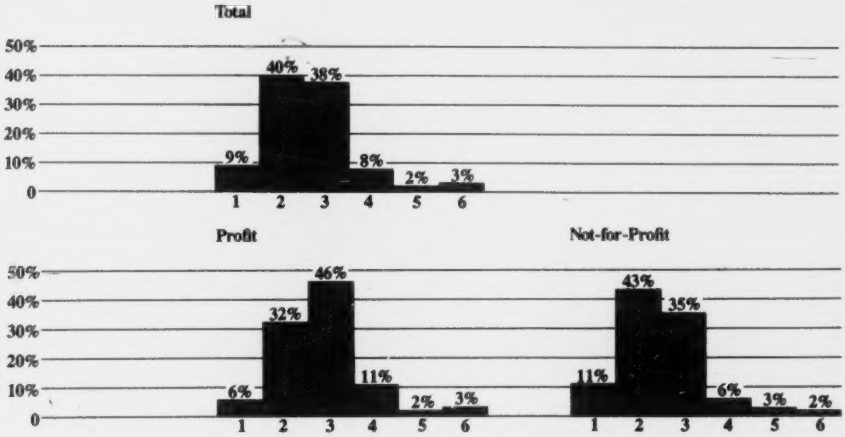
Is the D&O Liability Situation Damaging the Quality of Organizational Governance?

As in their evaluation of the extent of the crisis, those surveyed were united in their assessment of the extent to which the D&O liability situation is damaging the quality of governance in American organizations. Nearly 90 percent of all survey participants indicated that D&O issues were having some negative effect on governance. This figure includes 38 percent who feel the negative effect is "definitely getting worse" and 10 percent who feel that damage has already been done.

Among the not-for-profit participants, 78 percent of public officials felt that liability questions were having at least some negative effect on governance, and 9 percent said that either a considerable amount or a great deal of damage had already been

Some people have said that the D&O liability problem is damaging the quality of governance in American organizations. How do you react to this?

1. **Not true, no negative effect of consequence**
2. **Having some negative effect**
3. **Having some negative effect and definitely getting worse**
4. **Considerable damage has already been done**
5. **A great deal of damage has already been done**
6. **No opinion**



done. On the other hand, 16 percent of the orchestra executives and 20 percent of the college and university board chairpersons said that there has been no negative effect of consequence.

What Are the Sources of the Problem?
The survey asked, "Regardless of how serious you judge the D&O liability problem, who or what do you think is mainly responsible for it?" Seven specific answers—along with an open-ended "other" response—were offered, and participants were invited to choose as many answers as they believed to be important.

Nearly two-thirds of the respondents indicated that they believed lawyers and juries granting large awards were important causes of the situation. Other aspects of the legal system cited were the heavy publicity attendant upon big settlements (44 percent), the concept of joint and several liability (40 percent), and judges (22 percent). Nearly half blamed the insurance industry, and four in ten respondents listed inadequate legislation.

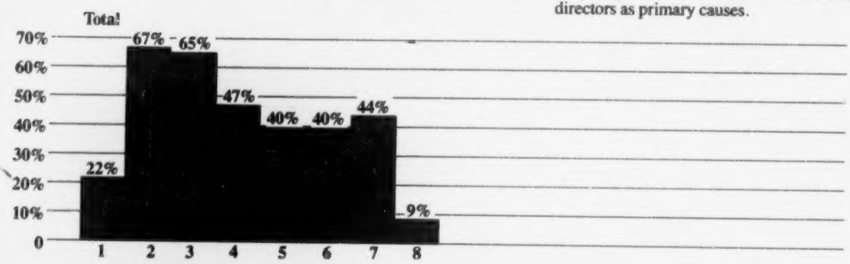
Among corporate executives, about three-quarters named jury awards (as did 74 percent of the college and university board chairpersons) and lawyers, and 31 percent said that judges are a primary cause.

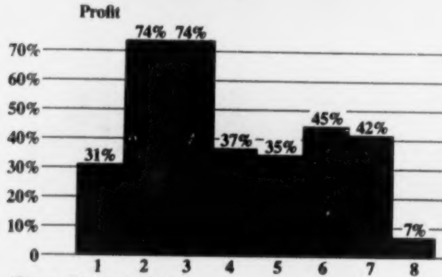
The most significant divergence of opinion concerned the role played by the insurance industry. While only 37 percent of the corporate chief executives surveyed named insurers as a cause, slightly more than half of the not-for-profit group and about 60 percent of the independent sector executives and university presidents laid the blame on the insurance industry. In addition, half of the hospital executives listed inadequate legislation as an important cause.

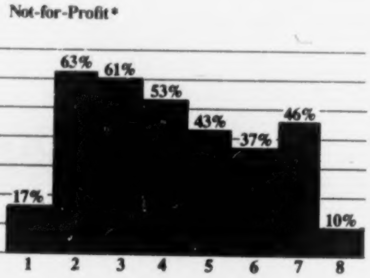
Overall, only 1 percent of the total sample pointed to either mergers and takeovers or the poor performance of some officers and directors as primary causes.

Who or what do you think is mainly responsible for the D&O liability problem?

1. **Judges**
2. **Juries granting high awards**
3. **Lawyers**
4. **The insurance industry**
5. **Inadequate legislation**
6. **The joint and several liability concept**
7. **Heavy publicity of big settlements**
8. **All other answers**







*Base = all but municipalities

Measuring the Impact of the D&O Liability Crisis

The survey attempted to assess the impact of the D&O liability crisis on three specific areas: liability insurance coverage, reluctance to join boards, and the way the organizations of those surveyed are managed.

Liability Insurance Coverage
Slightly more than three-quarters of the entire survey group belong to organizations that carry D&O liability insurance. In all, 90 percent of those in the for-profit sector had insurance protection, compared with 71 percent among those in the not-for-profit group.

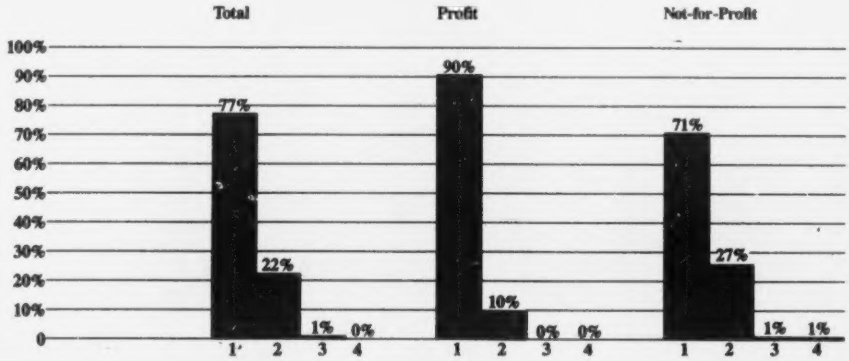
Of the not-for-profit organizations, hospitals (86 percent) and municipal officials (83 percent) had the highest frequency of coverage, while museum directors (45 percent) and orchestra executives (54 percent) were at the low end of the scale.

Most participants report increases in insurance premiums and expect premium increases over the next five years. Approximately one-third of the entire sample group reported that premiums had risen more than 300 percent at the last renewal of their organizations' D&O liability coverage, and another 46 percent indicated that rates had risen up to 300 percent. Only 6 percent reported that rates were unchanged. Half of the CEOs and one-quarter of the not-for-profit group reported increases in excess of 300 percent while 36 percent of the corporate executives and about half of those from the not-for-profit sector said that rates had risen up to 300 percent.

Asked about increases in deductibles, 16 percent of the entire sample had seen deductibles go up 300 percent, about one-quarter had experienced increases up to 300 percent, about one-third said deductibles did not change. Slightly more than one-third reported that coverage levels at last renewal had remained the same, 37 percent said that coverage had been reduced, and 7 percent said that coverage had broadened.

Does your organization carry D&O liability insurance for members of your board?

1. Yes
2. No
3. Covered by a state Indemnification Program
4. No opinion



About six survey participants in ten predicted premium increases over the next five years, while 4 percent expected premiums to remain the same and 11 percent foresee rate reductions. It is interesting that executives from the not-for-profit sector were more pessimistic than corporate CEOs about premium increases. Sixty-five percent of the not-for-profit respondents predicted rate hikes, compared with 54 percent of the CEOs, but another 21 percent of the corporate executives said that they expected rates to decline.

Forecasting trends in deductibles and coverage over five years, 43 percent of the full survey group predicted increases in premiums, 23 percent believed premiums would remain the same, and 7 percent predicted reductions. The group was split more evenly on the question of coverage: 20 percent predicted an expansion of coverage, 19 percent predicted a reduction, and 27 percent estimated that coverage levels would remain the same.

Impact on Organizational Management

All participants except CEOs were asked, "Overall, how great an effect is the D&O liability problem having on the way you manage your organization?" About six in ten reported an impact, while 38 percent said there was no effect. About half reported some effect, 10 percent reported a considerable effect, and 2 percent reported a great deal of effect.

Nearly 90 percent of the public officials surveyed indicated some degree of impact, and one-third said that there was considerable or a great deal of effect. Those organizations least affected were orchestras and independent sector groups.

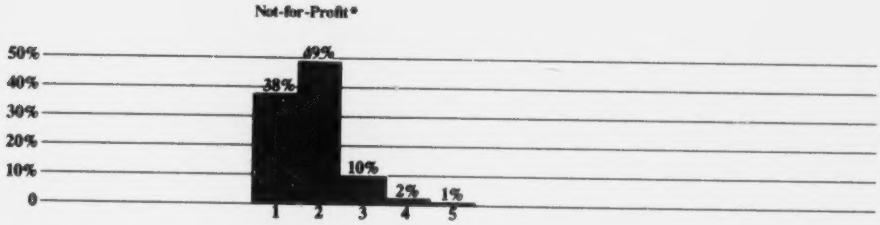
The Effect on the Recruitment of Directors

The survey findings show a very clear-cut division between the perception of D&O liability as a problem that could grow into a crisis and the effect that it is having as a deterrent to attracting outside directors. For example, only 6 percent of the survey participants reported having a person resign from their boards because of concern over personal liability exposure, and 8 percent reported having had a board candidate decline membership for the same reason.

These results, however, must be viewed in context—they represent responses from the nation's largest and oldest institutions, where the chill of D&O liability should be felt least. This trend is even more pronounced in a survey by the NACD (see "Parallel Study"), which included a number of smaller and emerging companies among its sample group.

Overall, how great an effect is the D&O liability problem having on the way you manage your organization?

1. **Has had no effect**
2. **Some effect**
3. **Considerable effect**
4. **A great deal of effect**
5. **No opinion**



*Base = all but CEOs

What happened to the last renewal of your organization's D&O liability insurance?

	Percentage Base	Up 300% and Over	Up 100% to 299%	Up 50% to 99%	Up 1% to 49%	Stayed the Same	Reduced 1% to 24%	Not Applicable: New Policy	All Other Answers
1. Premium									
Total	100%	34%	21%	12%	13%	6%	1%	4%	9%
Profit	100%	50%	21%	9%	6%	4%	0%	3%	7%
Not-for-Profit (All Others)	100%	24%	21%	13%	17%	7%	1%	4%	13%
2. Deductible									
Total	100%	16%	12%	8%	6%	32%	1%	4%	21%
Profit (CEOs)	100%	27%	16%	9%	6%	22%	1%	4%	15%
Not-for-Profit (All Others)	100%	10%	11%	6%	6%	37%	1%	5%	24%
3. Maximum amount of coverage available									
Total	100%	1%	2%	1%	3%	34%	4%	4%	51%
Profit (CEOs)	100%	2%	2%	2%	3%	28%	6%	3%	54%
Not-for-Profit (All Others)	100%	1%	2%	1%	2%	38%	2%	4%	50%

Some Potential Remedies

The survey examined participants' attitudes toward suggested state and federal legislative measures that would either offer varying degrees of protection to directors or in some way curtail the rising tide of lawsuits. Also sought were views on actions that an organization might undertake to ease the risk of litigation to its officers, trustees, or directors.

Attitudes Toward Legislation Protecting Not-for-Profit Trustees and Directors

Nearly nine in ten respondents said that they would be strongly or somewhat in favor of their home states' enacting legislation akin to a Connecticut statute that specifically addresses the liability concerns of trustees and directors of not-for-profit organizations. Under the Connecticut statute, a director, officer, or trustee of a not-for-profit group shall be immune from civil liability if he or she serves without compensation, acts in good faith, and is not found guilty of "willful or wanton misconduct."

Specific Legislative Proposals

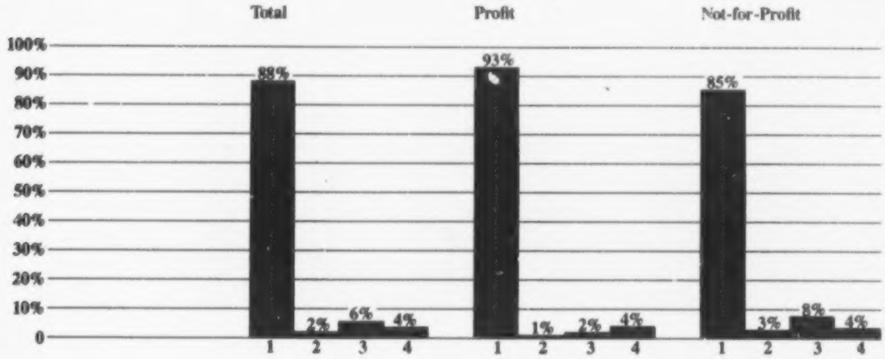
The study sought opinions on five legislative actions suggested by various groups interested in offering increased liability protection to directors and trustees.

- **Eliminating joint and several liability.** Across the board, nearly seven in ten corporate and not-for-profit respondents indicated that they would strongly favor eliminating joint and several liability, and approximately another 20 percent reported that they would somewhat favor elimination. Only about 6 percent were either somewhat or strongly opposed.

- **A cap on attorneys' contingency fees.** Of the total group polled, 91 percent said that they were in favor of limiting attorneys' contingency fees; only 4 percent registered opposition.

How would you feel about legislation being adopted in your own state that specifically addresses the problems of trustees and directors of not-for-profit organizations?

1. **Strongly/somewhat favor or approve**
2. **Somewhat/strongly against or disapprove**
3. **Legislation already exists**
4. **No opinion**



Indicate how favorable your reaction is to each one of the following legislative proposals that have been offered to resolve the current debate on the D&O liability problem.

		Percentage Base	Strongly Favor	Favor Somewhat	Somewhat Against	Strongly Against	No Response
1. Eliminating joint and several liability	Total	100%	69%	18%	4%	2%	7%
	Profit (CEOs)	100%	69%	22%	3%	0%	6%
	Not-for-Profit (All Others)	100%	69%	16%	4%	3%	8%
2. Putting a cap on attorneys' contingency fees	Total	100%	75%	16%	3%	1%	5%
	Profit (CEOs)	100%	80%	14%	2%	1%	3%
	Not-for-Profit (All Others)	100%	73%	16%	4%	1%	6%
3. Limiting the amount of punitive damages that could be awarded	Total	100%	72%	19%	3%	1%	5%
	Profit (CEOs)	100%	76%	16%	4%	1%	3%
	Not-for-Profit (All Others)	100%	70%	19%	3%	2%	6%
4. Allowing a defendant to sue a plaintiff for the cost of his or her defense where the defendant prevails	Total	100%	59%	26%	6%	3%	6%
	Profit (CEOs)	100%	69%	23%	4%	0%	4%
	Not-for-Profit (All Others)	100%	55%	27%	7%	3%	8%
5. Limiting strict liability (i.e., limiting the concept that allows recovery even if the party is not at fault)*	Not-for-Profit (All Others)	100%	62%	19%	4%	3%	12%

* Not asked of CEOs or public officials

- **Limits on punitive damages.** Asked whether they would favor restricting the amount of money that could be awarded as punitive damages in a lawsuit, over 90 percent replied that they were in favor of such a limitation. The strongest response came from hospital executives, 80 percent of whom strongly favored limiting punitive damages.

- **Recovery of legal fees.** Of the total sample, 85 percent said that they advocated allowing a defendant to sue a plaintiff for the cost of his or her defense in lawsuits where the defendant prevails. This proposal was strongly favored by nearly 70 percent of the CEO group, but by only about half of those from universities, museums, orchestras, and independent organizations.

- **Limiting strict liability.** All participants except CEOs and public officials were asked their views on limiting the concept that allows recovery even if the party sued is not at fault. About 62 percent were strongly in favor of such a measure—72 percent, in the case of hospital executives—and 19 percent indicated that they were somewhat in favor.

Self-protective Measures
Some boards have been or are considering taking steps to reduce the potential for liability litigation and to generally improve their oversight of management performance. Survey participants were asked to indicate which of several possible courses of action, if any, their boards had undertaken and to indicate whether others merited thought and consideration:

- **Expand information systems.** Roughly 55 percent of the entire sample and nearly 70 percent of the CEOs reported that their boards had already improved the depth and delivery of management information to the board. Another 19 percent said they were considering the idea or had concrete plans to do so.

- **Review governance procedures.** About four in ten replied that they had undertaken a fundamental review of governance procedures. In addition, 14 percent said they had plans to undertake a governance review, and 19 percent said it was a worthwhile idea. Fifty-four percent said they had formulated a conflict-of-interest policy, 6 percent indicated they had plans to formulate such a policy, and 19 percent called it an idea worth looking into.

- **Alter board structure.** Survey participants were asked about several courses of action involving the basic composition or structure of the board:

  —17 percent said they had formed new board committees, 6 percent said they had plans to do so, and 14 percent felt the idea had merit.

  —Almost one-quarter of respondents (24 percent) said they had recruited new members to add specific expertise or experience to the board, another 10 percent indicated plans to do so, and 16 percent labeled it a good idea.

- **Bring in outside experts.** Close to two in ten (17 percent) replied that they had brought in outside experts to counsel the board on legal liability. While only 7 percent said they had plans to bring in outside experts, another 36 percent said it was an idea worth looking into.

A Parallel Study by the NACD

In a parallel study conducted in 1986, the NACD polled 2,800 corporate directors and 50 state insurance and commerce commissioners to determine the scope and severity of the D&O situation. Findings showed increasing insurance costs, more restrictive policies, a growing reluctance to accept directorships without liability protection, and an increase in resignations from boards.

- **Insurance coverage.** About 80 percent of the 370 directors who responded to the survey serve on boards covered by D&O insurance. Of that number, about two-thirds reported that renewal terms of D&O policies had been reduced or made more restrictive over the last two years, and nearly three in ten said that their policies had been canceled or gone unrenewed in the last 12 months. About 45 percent indicated that additional exclusions were incorporated into renewal policies, and of the 70 who submitted D&O claims, about one-third had carriers attempt to either cancel coverage or add exclusions on which the claims were based.

These findings were corroborated by the 35 state officials, who reported a significant increase in the cost of D&O insurance coverage, accompanied by a drastic reduction in its availability. In the policies that remain available, state commissioners noted significant changes limiting the breadth of coverage.

- **Reluctance to serve.** About 36 percent of the directors polled said that they would be willing to serve on not-for-profit boards without D&O coverage, and about one-quarter said that they would serve without

Indicate which of the following steps your own board has taken for plans to take to reduce the potential or liability litigation, and any that you think merit thought and consideration.

		Percentage Base	Have Already Done	Plan to Do	An Idea Worth Looking Into	No Response
1. Expand the range/depth/speed of management information provided to board members	Total	100%	56%	5%	14%	25%
	Profit (CEOs)	100%	67%	3%	6%	24%
	Not-for-Profit (All Others)	100%	50%	6%	18%	26%
2. Formulate a conflict-of-interest policy	Total	100%	54%	6%	19%	21%
	Profit (CEOs)	100%	69%	3%	8%	20%
	Not-for-Profit (All Others)	100%	48%	7%	24%	21%
3. Undertake fundamental review of governance procedures	Total	100%	41%	14%	19%	26%
	Profit (CEOs)	100%	37%	8%	21%	34%
	Not-for-Profit (All Others)	100%	43%	17%	18%	22%

D&O coverage on corporate boards. About one in seven would refuse to serve on any board without protection, and approximately 4 percent had already resigned from boards without D&O coverage. Nearly half know colleagues who had refused directorships for lack of D&O insurance.

- **Litigation.** About half of the directors felt that it was "far more likely" that they would become involved in litigation today than five years ago. Thirty percent were currently serving on boards that had been involved in suits against directors, and about 18 percent had personally been named as defendants.

- **Remedies.** Of the 35 state officials surveyed, only 11 reported current or proposed initiatives to bring relief to the D&O situation. However, none of the state commissioners rated these initiatives as politically feasible.

Several state commissioners favored limiting directors' liability to no more than one or two years of directors' fees (compensation) plus the value of any stock options given to directors. Less favored were awards that penalize directors for amounts between $100 thousand and $1 million. No states favored imposing penalties on directors in excess of $1 million in punitive damages.

Over 90 percent of the board members called for state legislation penalizing frivolous suits against directors, and nearly three-quarters favored a state or federal cap on directors' liability.

		Percentage Base	Have Already Done	Plan to Do	An Idea Worth Looking Into	No Response
4. Bring in outside experts to counsel the board specifically on D&O liability	Total	100%	17%	7%	36%	40%
	Profit (CEOs)	100%	20%	5%	27%	48%
	Not-for-Profit (All Others)	100%	16%	8%	40%	36%
5. Form new board committees	Total	100%	17%	6%	14%	63%
	Profit (CEOs)	100%	21%	2%	8%	69%
	Not-for-Profit (All Others)	100%	16%	7%	17%	60%
6. Recruit new members to add specific expertise and experience to the board	Total	100%	24%	10%	16%	50%
	Profit (CEOs)	100%	18%	10%	8%	64%
	Not-for-Profit (All Others)	100%	27%	10%	19%	44%

About the Sample

People participating in this series of interrelated surveys were selected from the most authoritative lists available of such individuals or organizations. In the case of not-for-profit organizations, rosters of principal professional associations were used.

The "total" data, shown throughout this summary booklet, represent a combination of the types of individuals involved. However, because of the different universe sizes and numbers of respondents in each group, the data should be viewed as a guide rather than as a definitive picture. To arrive at the total figures, some weighting was done to bring each group into what, in our judgment, was its proper proportion in the total sample.

Any survey or series of surveys is subject to sampling error—that is, the extent to which the actual results obtained might differ from the results had everyone in each universe participated. The following table provides an approximation of the sampling error applicable to each group surveyed. For example, if 65 percent of business CEOs give a certain response, it can be expected that the corresponding result would have been between 61 and 69 percent had *all* such corporate officers participated.

	Sampling Error (Plus or Minus)
Corporate CEOs	4%
Orchestra executives	8%
Museum directors	4%
Independent Sector executives	7%
University presidents	5%
Board chairpersons	9%
Hospital executives	5%
Public officials	6%

D&O

Directors' and Officers' Liability:
A Crisis in the Making

An Examination of the Scope of the Problem and Its Impact on the Quality of Governance of American Institutions

A National Survey Conducted by
Opinion Research Corporation and
Research Strategies Corporation

The Liability Problem: *A Survey of Those Directly Affected*

For well over a year, there has been growing concern in America's boardrooms about the unprecedented liability exposure now faced by directors and officers of both corporations and not-for-profit organizations. A sharp rise in the number of liability suits and spiraling insurance costs have made it increasingly difficult for officers and directors to protect themselves.

As a professional service firm providing a broad range of audit, management consulting, and tax services for museums, Peat Marwick is concerned about the effect of the liability situation on the quality of governance and upon the ability of organizations of every stripe to attract independent directors to their boards. This is a matter of particular concern to our chairman, Larry D. Horner, who has led our national efforts in assessing the full impact of the liability problem.

For these reasons, we are taking steps to address the problem. In 1986 we helped create the CEO/Peat Marwick Panel on Directors' and Officers' Liability with six national organizations:

- American Association of Museums
- American Symphony Orchestra League
- Independent Sector (comprising the leading voluntary and charitable organizations)
- Association of Governing Boards of Universities and Colleges
- Public Risk and Insurance Management Association
- National Association of Corporate Directors

To gauge the dimensions of the problem and to aid in formulating a clear, reasoned approach to its solution, Peat Marwick commissioned Opinion Research Corporation to conduct an independent survey of those directly affected by the growing liability risk. The study, carried out in consultation with Research Strategies Corporation, surveyed corporate chief executive officers, board members, executives and professionals from business, government, education, and not-for-profit organizations.

This is a landmark study. It is the most comprehensive ever undertaken on this issue. In all, a total of 7,973 persons were surveyed, from which 2,532 responded—a sample size larger than that usually employed in national opinion polls. The aggregate response rate of 32 percent is greater than normally anticipated in research of this type—a clear indication of the timeliness of this study and the heightened interest that the directors' and officers' (D&O) liability problem has engendered.

This booklet summarizes the survey responses from museums. It reflects the views of 678 museum executives—a response rate of 36 percent. The principal findings of the survey serve to underline a widespread conviction that a crisis situation is brewing and dampening the quality of leadership of not-for-profit organizations at the board level in the United States.

We publish this booklet with our appreciation to Ed Able, executive director of the American Association of Museums, for his guidance and support, and with thanks to those who took valuable time to participate in the survey. We hope that these findings will prove useful in the next stage of the process—achieving reform to restore fairness to a system now out of balance.

Frederick J. Turk
National Director for Services
to Not-for-Profit Organizations
Peat Marwick

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About the Survey Participants

Size of Organization

Of the 678 museums represented in the survey, approximately half had budgets of more than $250,000 and half of less than $250,000:

- 3 percent had budgets of $10 million and over.
- 3 percent, $5 million to $9.9 million.
- 17 percent, $1 million to $4.9 million.
- 27 percent, $250,000 to $999,999.
- 23 percent, $100,000 to $249,000.
- 27 percent, less than $100,000.

Sources of Funding. Most museums received their funding from a combination of public and private sources:

- 65 percent received their funding from joint public and private sources.
- 26 percent, from private sources only.
- 8 percent, from public sources only.

The greater the size of the museum's budget, the more likely it was to be receiving funding from joint sources: 75 percent of museums with budgets over $1 million received funding from both public and private sources.

Those funded by both private and public sources (65 percent) were asked to identify the percentage of private and public (federal, state, and local) funding they received:

- 41 percent indicated that 50 percent or less came from private sources; 20 percent indicated that 51 percent to 75 percent came from private sources; and 34 percent, that 76 percent to 100 percent came from private sources.
- 53 percent indicated that none of their funding came from public federal sources; 39 percent indicated that 12 percent or less came from federal sources; and 6 percent indicated that 13 percent or more of their funding came from federal sources.
- 34 percent indicated that none of their funding came from public state sources; 32 percent, that between 1 percent and 9 percent came from the state; 26 percent, that between 10 and 80 percent came from the state; and 5 percent, that 81 percent or more of their funding came from the state.
- 27 percent indicated that none of their funding came from local public sources; 19 percent indicated that between 1 and 9 percent of the funding was from local public sources; 36 percent, that between 10 percent and 59 percent of their funding was local; and 15 percent, that 60 percent or more was from local public sources.

Those whose museums were funded by public sources only were asked the approximate percentages of the sources of public funding. These executives constituted 8 percent of all respondents.

- 69 percent indicated that none of their public funding came from federal sources; 8 percent indicated that between 1 percent and 49 percent came from federal sources; and 20 percent, that 50 percent or more came from federal sources.

Museum Directors Speak Out on Liability, Insurance, and Litigation
Verbatim Comments from the Survey

"My experience has been that in small organizations board members are often not aware of liability involved in their positions and continue to be poorly informed about the issue. Perhaps it's the attitude that the problem is only happening with the larger institutions... 'it can't happen here' attitude. We need a *real* education at this level."

"If the Connecticut law on liability of directors of nonprofit museums had not passed, we would have probably considered insurance necessary. Several of our trustees (including me) were extremely nervous about the situation and some considered resignation as a means of protection."

- 59 percent indicated that none of their public funding came from state sources; 2 percent, that between 1 percent and 49 percent came from the state; 11 percent, that between 50 percent and 99 percent; and 24 percent, that 100 percent of their funding was from the state.
- 52 percent indicated that none of their public funding came from local public sources; 4 percent, that between 1 percent and 49 percent came from local sources; 7 percent, that between 50 percent and 99 percent was from local sources; and 33 percent, that 100 percent of their funding was from local sources.

Size of Board. Most of the museums in the survey had board sizes of 25 and under:

- 73 percent had boards of 25 and under.
- 21 percent had boards of 26 to 59 persons.
- 2 percent had boards of 60 and over.

The museums with larger budgets had larger boards (among those with budgets of $1 million and over, 6 percent had boards of 60 or over, and 36 percent had boards of from 26 to 59 members).

Status of Executive. More than half (54 percent) of the museum executives were participating members of their museum's board without vote; 20 percent were full voting members of the board; and another 21 percent attended meetings only.

The executives were asked if their museums had a membership category giving the holder voting authority over museum and board decisions.

- 10 percent had such a category.
- 87 percent did not have such a category.

Location of Museum. Most of the museums in the survey were in the East and Midwest.

- 27 percent were in the Northeast.
- 25 percent were in the Midwest.
- 19 percent were in the Southeast.
- 15 percent were in the Far West.
- 13 percent were in the Southwest.

Type of Museum. A wide variety of museums was represented in the survey:

- 40 percent were history museums.
- 31 percent were art museums (47 percent of the museums with budgets of $1 million and over were art museums).
- 19 percent were historic sites.
- 10 percent were natural history museums.
- 8 percent were science and technology museums.
- 8 percent were general museums.
- 3 percent were botanical gardens/arboretums.
- 2 percent were transportation museums.
- 1 percent were zoos and 1 percent were aquariums.

The Crisis and Its Roots

Extent of the Problem

Is the Crisis Overblown? The vast majority of museum executives saw the problem of liability insurance for directors and officers as being serious:

- 69 percent saw the problem as possibly growing into a crisis.
- 14 percent saw the problem as being of crisis dimensions now.
- Only 14 percent saw the problem as being overblown.

Effect on Governance. The vast majority also saw the liability problem as damaging the quality of governance in American institutions. Eighty-three percent of the executives felt that the problem was having some negative effect, was getting worse, or felt that damage had already been done.

Effect on Institutional Management. Less than half felt that the D&O liability problem had not affected how they manage their institutions. Of those who felt it was having an effect:

- 48 percent indicated it was having some effect.
- 5 percent indicated it was having considerable or great effect.

Sources of the Problem

Asked what they thought was mainly responsible for the D&O liability problem, more than half cited:

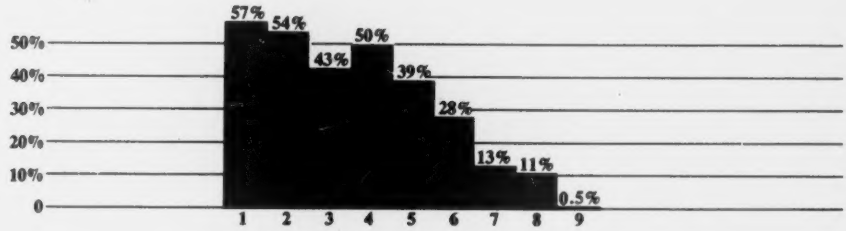
- Lawyers (57 percent)
- Juries granting high awards (54 percent). Additionally, 43 percent cited the heavy publicity of big settlements.
- The insurance industry (50 percent)

Substantial proportions also saw the following as responsible:

- Inadequate legislation (39 percent)
- The joint and several liability concept (28 percent)
- Judges (13 percent)
- Other (11 percent)
- Poor performance of some officers/directors (one-half of one percent)

Who or what is mainly responsible for the D&O liability problem?

1. Lawyers
2. Juries granting high awards
3. Heavy publicity of big settlements
4. Insurance industry
5. Inadequate legislation
6. Joint and several liability concept
7. Judges
8. Other
9. Poor performance of some officers/directors



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The Impact of the D&O Liability Crisis

Coverage

Museum Directors Speak Out on Liability, Insurance, and Litigation
Verbatim Comments from the Survey

"The general public and lawmakers must realize the inherent risk that comes with providing almost any kind of worthwhile experience; that public parks and museums cannot make a totally risk free experience available to the public. Either accept the risk or give up the experience."

"I think the problem, if not resolved, will discourage good people from agreeing to serve on volunteer boards. Our trustees were very interested to learn of the Connecticut legislation, and there was a feeling we should push for it in our state. Action is contemplated."

Current Coverage. Less than half the museum executives represented institutions that currently carry D&O liability insurance for members of their boards:

- 45 percent of the executives indicated their institutions carry such insurance.
- 53 percent reported that their institutions do not currently carry D&O liability insurance.

Of those currently carrying such insurance, the main dollar amounts involved in the premium for the D&O coverage were predominantly between $1 million and $5.9 million—45 percent of the executives cited figures in this range. An additional 26 percent cited coverage of up to $1 million, and 15 percent, coverage of $6 million or more.

For the deductible, more than a third (37 percent) of the executives answered "none"; another 29 percent cited deductibles of up to $1.9 million; and 23 percent, deductibles of more than $2 million.

Concerning the dollar value of the liability coverage, most executives (64 percent) of institutions carrying D&O liability insurance were covered for $1 million or less; 9 percent for $1.1 to $4.9 million; and 13 percent for $5 million or more.

Almost half the institutions (45 percent) had carried D&O liability insurance on board members at some time during the last five years; half (49 percent) had not.

Past Coverage. Of those in institutions that do not carry liability insurance now, but had done so in the last five years, 75 percent said the reason for no longer carrying D&O liability insurance was that they were unable to get coverage at an affordable cost. Another 9 percent were unable to get coverage at any price.

Coverage of Staff/Volunteers. Paid museum employees and nonboard volunteers were both covered by D&O liability insurance to some extent but in differing degrees:

- 67 percent of executives indicated their insurance covered paid staff members; and 25 percent, that it did not.
- 39 percent indicated their insurance did cover nonboard volunteers; and 51 percent, that it did not.

Museum Directors Speak Out on Liability, Insurance, and Litigation

Verbatim Comments from the Survey

"(1) The museum has a three-year policy, which expires in 1987. We have been forewarned that our premium will most likely increase if the current climate in the insurance industry continues.
(2) Board members have indicated that were D&O insurance not in place they would be reluctant to serve. (3) I am a board member of another organization which does not have D&O insurance. I am working to encourage the board to fund the premium out of our pockets as a donation (albeit self-serving). (4) One of the museum's trustees was sued for slander recently as a result of remarks made during his participation on another board. Considering that he is an attorney, we are that much more concerned about the peril faced by directors, trustees, and employees."

Recent Changes and Predicted Trends in Coverage

Premiums. Those in museums that carry liability insurance found that premiums had risen substantially in the last renewal period:

- 27 percent cited an increase of 300 percent and more; in institutions with budgets over $1 million, 37 percent cited such increases in premiums.
- 22 percent cited increases of 50 percent to 299 percent.
- 13 percent cited increases of 1 percent to 49 percent.
- 9 percent indicated their premiums had stayed the same; 1 percent, that they had been reduced.

Among those in institutions paying higher premiums:

- 4 out of 10 had taken some steps to accommodate the increase.
- 7 percent had engaged in additional fund-raising.
- 10 percent had cut expenses.
- 21 percent had taken all the above steps.

Deductibles. In many cases the deductible had changed over the last renewal period:

- 22 percent indicated that the deductible had risen.
- 34 percent, that the deductible had stayed the same.
- 1 percent, that the deductible had been reduced.

Maximum Amount of Coverage. Moveover, the maximum amount of coverage available had stayed the same in many cases and had been reduced in some:

- 37 percent indicated that maximum coverage had stayed the same.
- 20 percent, that coverage had been reduced.
- 5 percent, that coverage had been increased.

Anticipated Changes. Many of those now carrying D&O liability insurance thought that both premiums and deductibles would rise during the next five years:

- 50 percent thought the premiums would increase; 4 percent thought that premiums would go down; 3 percent thought they would stay the same; 3 percent thought they would not be able to get coverage at any price; and 40 percent didn't know or didn't respond.
- 32 percent thought that the deductible they would have to pay would rise; 3 percent thought it would go down; 14 percent thought it would stay the same; 2 percent thought they would be unable to get coverage at any price; and 49 percent didn't know or didn't respond.

Museum Directors Speak Out on Liability, Insurance, and Litigation
Verbatim Comments from the Survey

"While our organization's involvement in litigation has been limited to one incident, the potential for lawsuit by a sue-happy public, abetted by lawyers, is considerable."

"I am delighted you are conducting this survey and hope you get an excellent return. With facts one can do wonders. We believe we must have this insurance, and the sudden rise in rates constitutes a very serious problem. We believe insurance industry losses on this class of insurance do not justify these rate increases–that they are making up for losses on other classes, or worse, increasing profits. The answer, I am afraid, lies in legislative proposals of the type you have identified."

There was no agreement on whether the maximum coverage would change in the next five years: 49 percent did not respond or indicated they did not know what would happen to the maximum coverage; 28 percent thought it would stay the same; 9 percent thought it would rise; 11 percent thought it would go down; and 3 percent thought they would be unable to get coverage at any price.

Museum executives varied considerably in their responses to a question regarding how much D&O liability insurance premiums would have to increase for them to consider such insurance unaffordable. Among those whose institutions currently carry D&O liability insurance:

- 30 percent of the executives indicated that their premium would have to go up 200 percent or more for them to consider such insurance unaffordable.
- 17 percent indicated that an increase of 100 percent to 199 percent would make liability insurance unaffordable.
- 14 percent indicated that an increase of 1 percent to 99 percent would make liability insurance unaffordable.

Suits Against Board Members

Among those executives in institutions currently carrying D&O liebility insurance, 90 percent indicated their board members had never been jointly or severally sued for something specifically covered by the liability insurance.

- 4 percent of the executives indicated their board members had been sued.
- Among those sued, in no case had the most recent suit been lost by the board members. Suits had either been won (13 percent), settled out of court (6 percent), or were unresolved (23 percent).

Resignations from Boards or Reluctance to Serve

To gauge the depth of concern over personal liability exposure, executives were asked whether anyone had ever resigned from, or declined to serve on, their boards because of this concern:

- 4 percent indicated that a board member had resigned because of such concern.
- 7 percent indicated that a prospective board member had declined a position because of this concern.

Actions Taken to Improve Board Functioning

To ascertain what steps the institution had taken—or was considering—to reduce the potential for liability litigation, the executives were queried on a number of actions:

Review Institutional Policies. Forty percent indicated they had already undertaken a fundamental review of institutional policies and procedures; 22 percent planned to do so; and another 13 percent thought it was an idea worth looking into.

Expand Management Information. Thirty-eight percent indicated they had already expanded the range, depth, and speed of management information to board members and committees; 9 percent planned to do so; and another 18 percent thought it was an idea worth looking into.

Recruit New Board Members. Thirty percent had recruited new board members to add specific expertise and experience; 17 percent planned to do so; and another 14 percent thought it was an idea worth looking into.

Establish Policies to Safeguard Assets. Twenty-nine percent indicated they had already established new policies to safeguard the institution's assets, such as investments, property, inventory, cash management; 14 percent planned to do so; and another 23 percent thought it was an idea worth looking into.

Formulate Conflict-of-Interest Policy. Twenty-eight percent indicated they had already formulated a conflict-of-interest policy; 14 percent planned to do so; and another 32 percent thought it was an idea worth looking into.

Switch from Pro Bono to Paid Legal Counsel. Twenty-four percent indicated they had already switched from pro bono to paid legal counsel; 2 percent planned to do so; and another 27 percent thought it was an idea worth looking into.

Improve Criteria for Investment. Twenty-one percent indicated they had already defined or improved criteria for investment in stocks, bonds, or real estate; 10 percent planned to do so; and another 23 percent thought it was an idea worth looking into.

Form New Board Committees. Seventeen percent indicated they had already formed new board committees; 11 percent planned to do so; and another 14 percent thought it was an idea worth looking into.

Museum Directors Speak Out on Liability, Insurance, and Litigation

Verbatim Comments from the Survey

"This issue is very serious and will have its greatest impact on small institutions in the next few years. The premiums for this coverage are often prohibitive to the small societies. The very real danger of closing institutions due to this situation is on the horizon and will be one of the most devastating blows to our access to our own cultural heritage."

"The decline in public and governmental funding forces nonprofits to seek private support and expertise. The risk of D&O liability is a strong deterrent to successful recruitment of the type of executive we need. Failure to resolve the D&O liability problem *will* result in the demise of many small nonprofit organizations who find themselves unable to attract/keep qualified officers for their boards. Liability (general liability) is the single greatest threat to groups like ours. D&O liability is the tip of the iceberg."

Review Board Minutes. Nine percent indicated they already had board minutes reviewed in draft form by counsel before publication; 2 percent planned to do so; and another 36 percent thought it was an idea worth looking into.

Bring in Outside Experts. Eight percent brought in outside experts to counsel the board specifically on D&O liability; 7 percent planned to do so; and another 43 percent thought it was an idea worth looking into.

Those who had formed new committees or recruited new board members had done so generally to increase expertise:

Strengthened Legal Expertise. Thirty-two percent had strengthened their legal expertise.

Strengthened the Finance Committee. Twenty-one percent had strengthened the finance committee to advise senior management and particularly financial management regarding the financial affairs of the institution.

Strengthened Insurance Expertise. Thirteen percent had strengthened their insurance expertise.

Strengthened Audit and Accounting Expertise. Eight percent had strengthened their audit and accounting expertise.

Strengthened Planning/Strategy Expertise. Seven percent had strengthened their planning/strategy expertise.

Added Board Member with Particular Expertise. Five percent had added a board member with expertise in a particular area or with an appropriate background.

Strengthened Personnel/Human Resources Management. Five percent had strengthened personnel/human resources management.

Created Special Committee on Ethics. Five percent had created a special committee on ethics to review museum policy.

Strengthened New Service/Business Products. Five percent had strengthened the acquisition and development of new areas of service and business products.

Formed Committee on Public Policy Interests/Community Concerns. Four percent had formed a committee on public policy interests/community concerns.

Some Potential Remedies
Reactions to State Legislative Proposals

Museum Directors Speak Out on Liability, Insurance, and Litigation
Verbatim Comments from the Survey

"To go from $350 per year to $1,500 per year in premiums for half the coverage is criminal price gouging. D&O insurers should take into account the type of business we are in. Even the *worst* cases of museum trustee negligence I have read don't compare at all to problems of a drug manufacturer or nuclear power plant operation."

"Our audits are always stellar, our rapport with the community is good, our professionalism is unparalleled. Is that very good record taken into account when deriving the cost of the premium?"

The executives were asked how they would feel about their state's adopting legislation like that of Connecticut, which specifically addresses the problems of directors, officers, and trustees of not-for-profit organizations. The questionnaire noted that the Connecticut legislation provides that a director, officer, or trustee of a not-for-profit organization will be immune from civil liability if he or she is uncompensated, acting in good faith within his or her scope of responsibility, and not guilty of "willful or wanton misconduct":

- 88 percent approved of such legislation and only 3 percent disapproved; the balance mentioned that similar legislation already exists (5 percent) or did not respond.
- Over half (57 percent) of those who approved and who were in states without such legislation thought their boards would be willing to actively advocate similar legislation, 36 percent were not sure, and 4 percent thought their boards would not be willing to actively advocate such legislation. Of those who weren't sure or who thought their boards would not advocate D&O liability legislation, most thought that it was not an issue or hadn't been discussed, or that the issue was not relevant to the boards' priorities, or they didn't know what their board members' reaction would be.

Reactions to Proposals for Modifying the Current System

Museum executives were asked whether or not they favored each of several proposals offered to resolve the current debate on the D&O liability problem. The vast majority favored the following:

- **Limiting the amount of punitive damages that could be awarded** (damages in excess of normal compensation awarded to punish wrongdoers). Sixty-five percent strongly favored and 21 percent somewhat favored.
- **Putting a cap on attorney's contingency fees.** Sixty-four percent strongly favored and 22 percent somewhat favored.
- **Eliminating joint and several liability** (the concept that allows any one of several parties to be held liable for all the damages caused in a single incident). Fifty-eight percent strongly favored and 22 percent somewhat favored.
- **Limiting strict liability** (the concept that allows recovery even if the party is not at fault). Fifty-seven percent strongly favored and 20 percent somewhat favored.
- **Allowing a defendant to sue a plaintiff for the cost of his or her defense when the defendant prevails.** Fifty percent strongly favored and 27 percent somewhat favored.

Mechanisms for Alternative Dispute Resolution

The majority of executives indicated their institutions lacked a mechanism encouraging or mandating alternative dispute resolution before the filing of a lawsuit. Eighty-four percent indicated their institutions had no such mechanisms, and almost all these executives thought the idea was a good one or was worth considering.

Conclusions and Recommendations

Museum Directors Speak Out on Liability, Insurance, and Litigation
Verbatim Comments from the Survey

"This museum is a subdivision of county government. The question has been discussed that liability might extend beyond the appointed museum board to the elected county officials who approve such appointments. Complicated, to say the least, but realistic in this day and age. A simple solution is probably not possible—but some immunity is in order."*

"The problem is of less concern in our case because we have no board of trustees and are part of a municipality which offers blanket insurance and legal services. Nevertheless, increased costs of doing business are shared. Definite legal limits are needed on institutional liability. Greedy individuals and their attorneys, irresponsible judges and juries often seem to look upon our courtrooms as public lotteries."*

See Peat Marwick's report, *Directors' and Officers' Liability, A National Study of Government Officials.

The survey's findings suggest several possible ways to address the crisis in providing liability insurance for directors and officers. This section discusses proposals for concrete and immediate legislative action. It also includes observations on some aspects of the crisis that appear to stem from the nature of contemporary American society, particularly its current legal traditions and practices. Finally, this section examines the kinds of internal changes that institutions may undertake to strengthen their boards and prevent further damage because of the liability crisis.

Pursuing Measures to Limit Liability

Drafting Model Legislation. Legislative remedies are clearly in order. The survey shows that such solutions enjoy widespread support among executives of the nation's for-profit and not-for-profit institutions, organizations, and governmental entities. Presumably they also have support among many other groups concerned with the liability crisis and its far-reaching effects on the tradition of American organizations and board volunteer service.

To create a favorable environment for institutions and to preserve or increase the strengths of their boards, legislation could be enacted at the state level to:

- Indemnify directors
- Limit or cap punitive awards

Several states have already enacted legislation to protect corporate directors and officers from undue exposure. Peat Marwick recommends drafting model legislation to assist other states contemplating similar actions. In addition, on February 2, 1987, Representative John Porter (R–10th, Ill.) introduced the Volunteer Protection Act of 1987 to encourage states to exempt all volunteers from civil liability except for acts of willful or wanton misconduct. Peat Marwick supports Representative Porter's effort.

Adoption of the "English Rule." To discourage frivolous lawsuits or lawsuits without legal merit, federal or state legislation could be enacted adopting the "English Rule" in class action suits. Under this rule, the losing party assumes all court costs.

Reexamining Legal Bases for the Current Crisis

In addition to the concrete legislation proposed above, the survey findings indicate the need for closer examination of aspects of our legal system that may be contributing to the current crisis. As a start in identifying and resolving such problems, three particular practices warrant scrutiny:

Museum Directors Speak Out on Liability, Insurance, and Litigation

Verbatim Comments from the Survey

"To a very large extent I believe the crisis in directors' and officers' liability suits is the fault of a system which is becoming increasingly litigious. 'Anyone can sue anyone,' our lawyer friend on the board remarked the other day. And, unfortunately, all too often they do. For the hundred suits which are dropped or are unsuccessful, there needs to be only one to succeed, particularly with a large settlement, for the news to spread and to give ideas to those who feel they have been injured."

"This museum is a department of a university and the director reports to the provost. Therefore, the university administration and ultimately the board of trustees of the university bear the legal responsibility usually incurred by a museum board. The university is covered with liability insurance. There are also advisory groups supporting the museum which are not covered by insurance. Many university museums will have a similar structure, I believe."**

- The system permitting class-action suits requires reform. Access to the courts must continue to be available to the poor. At the same time, however, the system must be reformed so that it ceases to be a means of enrichment for the few attorneys who initiate most of the lawsuits.
- The legal principle of joint and several liability, under which a party found only partially culpable for an action may be required to pay the entire claim sought, should be reexamined. The civil tort system should be based on actual responsibility for damages, not on ability to pay.
- The concept of punitive damages must also be reexamined. Our system should be more closely aligned with those in Europe and Japan, where damage awards are based on actual expenses and loss of income rather than inflated and unrealistic awards to the plaintiff.

Reviewing Directors' Responsibilities

The current crisis highlights the need for a better definition of the scope of directors' responsibilities to their boards, organizations, or corporations, including clarification of the limits of their responsibility. The managerial aspects of board membership should be addressed with a view to strengthening overall board management. Directors must be more aware of their responsibility for providing advice and guidance on policy issues, for adopting more effective mechanisms for budgeting and reporting, and for otherwise exercising adequate controls over the functions of the institution. Through improved functioning and clearer understanding of their roles, board directors and officers can better protect their organizations and carry out their responsibilities. At the same time, clearer delineation of those responsibilities can help to protect directors and officers from charges of malfeasance or negligence.

Peat Marwick proposes establishing a nonpartisan task force to review directors' responsibilities. Such a task force might be drawn from members of the Peat Marwick/CEO Panel on Directors' and Officers' Liability, prominent graduate schools of business, business think tanks, shareholder organizations, the American Bar Association, and (in the case of corporations) listing exchanges. The task force could draw on statements of directors' responsibilities that have been written into law, or that have been used by professional bodies such as the National Association of Corporate Directors and by the for-profit and not-for-profit communities. The task force would aim at preparing a "directors' charter" outlining duties and ethical standards.

**See Peat Marwick's report, *Directors' and Officers' Liability, A Study of University Presidents and Board Chairpersons.*

About the Research

To study the D&O liability problem in museums, Peat Marwick worked with the American Association of Museums (AAM). Museum directors from approximately 2,000 of the nation's largest museums were selected from AAM's membership. The questionnaire was, in most respects, similar to those used for other groups in the survey; some questions, however, were tailored specifically to the concerns of museums.

The questionnaire and the cover letter explaining the survey were mailed in September 1986. Tabulation and analysis took place in November and December of 1986.

The results of this survey, as of any other, are subject to sampling errors—that is, the extent to which the findings might differ from what the findings would have been had everyone in this universe participated in the survey. The estimated sampling error for museum directors is plus or minus 4 percent. For example, if 62 percent of the museums directors answered a question in a given way, it may be expected that, had everyone participated in the survey, the corresponding finding would have been in the 58 percent to 66 percent range.

In some instances, percentages may not add exactly to 100 percent because percentages were rounded off or because some respondents gave more than one answer. Moreover, because this booklet summarizes the results, not every answer category has necessarily been shown, nor have "other" responses been included unless they were mentioned by substantial proportions of the respondents. Readers interested in more details concerning the findings summarized herein or in other aspects of the survey are urged to contact Peat Marwick for more information.

THE LIABILITY CRISIS AND THE USE OF VOLUNTEERS BY NON-PROFIT ASSOCIATIONS

A Survey Conducted for:

The Foundation of the American
Society of Association Executives

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INTRODUCTION

This report has been prepared by The Gallup Organization, Inc. for the Foundation of the ASAE. The report summarizes the findings of a survey of non-profit organization executives and volunteer board members concerning liability risk. The survey covered the following areas:

Survey of association executives:

1. Incidence of carrying director and officers liability insurance coverage.
2. Change in cost of liability coverage since 1984.
3. Changes resulting from concern for exposure to liability risk.
4. Practices used by non-profit organizations to minimize liability risks
5. Incidence of suits over liability issues.
6. Effect of liability coverage on relations with association chapters.
7. Indemnification of directors or volunteers.
8. Perceived effect of liability exposure on volunteers.

Survey of board members:

1. Effect of liability crisis on participation in not-for-profit organizations.
2. Extent to which volunteers inquire into liability coverage and issues prior to accepting board membership.
3. Perceived effect of liability crisis on volunteers.
4. Incidence of refusing to serve due to fear of liability.
5. Experience with lawsuits.
6. Extent of insurance coverage.

SAMPLE DESIGN

The samples for this survey were drawn from two separate databases, one consisting of associations represented by ASAE members, and the other of associations represented by ASAE prospects (6,581 and 12,426 records respectively). Each organization record contained the name of an executive officer. A proportionate stratified random sample was drawn from each database, and proportionate interviewing quotas for executive officers were set for member and prospect organizations, in order that the survey results could be used to represent the opinions of executive officers in the total combined population of members and prospects.

In addition to the sample of executive officers, a sample of board members was interviewed. Since the names of board members were not available in the databases used as a sampling frame for the executive officer component of this study, interviewers took advantage of their executive officer contacts to generate a sample for the board member component.

Specifically, at the end of the interview, interviewers requested the names and telephone numbers of (1) the board chairperson, and (2) the most recently admitted board member. The rationale behind this purposive selection method was that it would provide a full range of opinion on the liability issues upon which the questionnaire focused, by representing the endpoints of the continuum of ingrained self-identification with the interests of the organization. This procedure possessed the additional advantage of not requiring the executive officers to provide a full (and sometimes extensive) list of board members. As with the executive officer component of the study, proportionate interviewing quotas were set for board members among ASAE member and prospect organizations.

Each prospective respondent was sent a letter of notification in advance of the telephone interview. All interviews were conducted by Gallup's own staff of interviewers in Princeton, NJ. A total of 265 executives and 359 volunteer board members were interviewed during the period from October 26 through November 24, 1987.

SUMMARY OF FINDINGS

Given the concern for liability it is somewhat surprising that only about two-thirds of the organizations report carrying director and officer liability insurance. However, it may be noted that seven in ten board members report they are insured either by their company or by a personal liability policy. Volunteer board members are also likely to report the biggest effect of the liability situation is a concern for insurance coverage.

Most voluntary organizations report the cost of liability insurance has increased. In fact, the average reported increase in the past three years is 155%, and one in eight organizations report an increase of over 300%, roughly the equivalent of a 100% increase over 1984 rates per year.

The risk of being sued or being held liable has lead organizations, in some instances, to make changes. About one in twenty report changing the structure of their board of directors, and as many eliminated committees due to the potential exposure to liability risk. A larger proportion (14%) have eliminated programs they believed would expose the organization to risk.

From the volunteer board member's perspective the fear of exposure to liability is seen as resulting in fewer individuals willing to serve as volunteers. About half of the active board members report a decline in volunteers in the past few years. In fact, 16% of the board members report they have withheld their services to an organization out of fear of liability. More common, seven in ten report volunteers are more careful in what they do or say as board members. Related to the greater caution expressed by board members, organizations report establishing policies concerning volunteer activities. Eight in ten organizations have a policy regarding who may speak for the organization and nine in ten give their committees and boards specific charges and authorization and monitor compliance.

While there is a great deal of concern for the risk of liability, only one in twenty organizations report being sued on a directors and officers liability questions in the past five years. However, the response says nothing about the organizations which may have adopted more cautious policies to avoid such situations nor does it indicate the extent to which potential suits may have been averted before filing with the courts. It is of note that almost as many board members as organizations report being sued. It may also be noted that while only about 5% were sued within the past five years, one in four organizations have been sued at some time in the past.

Thus, while the number of organizations reporting problems with liability risk is not great, concern for liability is common. Organizations have taken steps to alter their operations or activities to minimize liability in the face of ever increasing insurance rates and potential risk. Volunteer board members approach the request to serve on an organization's board with caution, investigating the organization's history of lawsuits and its' potential for liability risk. Finally, volunteers are more likely than organization executives to express concern and see a problem affecting the number and quality of volunteers resulting from the liability crisis.

The following pages summarize the findings of interviews with association executives.

Carrying of Director and Officer Liability Insurance

The Questions: **To begin, does your organization currently carry director and officer liability insurance coverage?**

Does your coverage include exclusions for any of the following?

- **Ethics committee**
- **Standards committee**
- **Peer review**
- **Employee discrimination**

When were these exclusions added?

Approximately two-thirds (64%) of all associations surveyed report carrying D & O liability insurance coverage. Among those with liability coverage one in eight (13%) report their insurance has exclusions for ethics or standards committee, peer review or employee discrimination. Typically such exclusions appear to have been imposed on the association's coverage since 1985.

Carry D & O Liability Insurance Coverage	All Executives %
Yes	64
No	35
No answer	1
Total	100
Number of Interviews	(265)

Exclusions	All with D & O Insurance %
• Coverage has exclusions (Net)	13
Peer review	10
Standards committee	6
Ethnics committee	6
Employee discrimination	4
None of the above	87
Total	100
Number of Interviews	(171)

Extent to Which Costs for Liability Coverage Have Increased

The Question: **Compared with the cost of liability coverage in 1984, by what percentage, if any, have your premiums gone up?**

Most associations with D & O coverage report an increase in their premium since 1984. On average, the reported increase is 155%, and the median increase is 54%. Among associations carrying D & O liability insurance about one in four (26%) report their premiums have increased by 100% or more since 1984. Another one in four (23%) have seen their premiums rise by twenty to eighty percent in the past three years. Only one in seven (14%) report no increase. A large percentage of executives could not estimate the extent of change in the cost of their insurance premiums.

Percent increase on premiums since 1984	All with D & O Insurance %
Over 300%	12
Over 200 to 300%	5
Over 100 to 200%	5
100%	4
80-99%	0
70-79%	2
60-69%	4
50-59%	7
40-49%	2
30-39%	4
20-29%	4
10-19%	6
1-9%	4
No increase	14
Can't say	27
Total	100
Number of Interviews	(171)
Median	54%
Mean	155%

Changes Resulting From Concern with Liability Risk

The Questions: **Has concern for problems with liability caused your organization to make changes in the structure of your board of directors?**

Has your organization eliminated any programs due to potential exposure to liability risks?

Has your organization eliminated any committees due to potential exposure to liability risk?

Relatively few associations (5%) report making changes in the structure of their board of directors as a result of concern for problems of liability. However, a larger proportion (14%) have eliminated programs due to potential exposure to liability risk. The elimination of committees is less common, only 5% report potential exposure to liability risk has lead to the elimination of committees.

While the number of executives reporting liability issues have affected the organization's leadership is relatively small it is noteworthy that such organizations are more likely than others to report changes in board structure or elimination of programs or committees.

		Liability effected Leadership	
	All Executives	Yes*	No
Made changes on structure of board	%	%	%
Yes	5	17	2
No	95	83	98
Total	100	100	100
Number of Interviews	(265)	(52)	(213)

		Liability effected Leadership	
	All Executives	Yes	No
Eliminated programs	%	%	%
Yes	14	25	11
No	86	75	89
Total	100	100	100
Number of Interviews	(265)	(52)	(213)

		Liability effected Leadership	
	All Executives	Yes	No
Eliminated committees	%	%	%
Yes	5	17	2
No	95	83	98
Total	100	100	100
Number of Interviews	(265)	(52)	(213)

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*Executives who answered "yes" to at least one of the following questions are categorized as yes to this item.

Have any potential volunteer leaders withheld their services to your organization due to concern over liability exposure?

Have any volunteer leaders resigned due to concern over the liability situation?

Has the number of volunteers actively participating in the leadership of your organization declined as a result of the liability situation in the past three years?

Review of Organization Documents

The Question: **Are the governing documents of your organization periodically reviewed to make them current and consistent with present interpretation of association law?**

Almost all (88%) association executives report they periodically review the organization's governing documents to keep them current with interpretation of association law.

Governing documents reviewed	All Executives %
Yes	88
No	11
No answer	1
Total	100
Number of Interviews	(265)

Policies Concerning Volunteers

The Questions: **Is there an established policy as to who among the volunteers and staff is specifically authorized to communicate outside, the association's views, comments and positions?**

Are volunteers prohibited from using association letterhead except when authorized for a specific task, project or purpose?

Do committees and boards have specific charges and authorizations and are they monitored to insure compliance?

A large majority of organizations (80%) have policies concerning communication of the association's views outside the organization. The same proportions report prohibitions on the use of official letterhead except for authorized use.

Nine in ten association executives (90%) also report committees and boards have specific charges and authorizations and are monitored for compliance.

Established policy regarding communication	All Executives %
Yes	80
No	19
No answer	1
Total	100
Number of Interviews	(265)

Prohibitions against using letterhead	All Executives %
Yes	80
No	18
No answer	2
Total	100
Number of Interviews	(265)

Committees/Boards have specific changes/authorization	All Executives %
Yes	90
No	8
No answer	2
Total	100
Number of Interviews	(265)

Experience with Law Suits

The Questions: Has your association been sued on a directors and officers liability question in the past five years?

How many times?

When was the last time your organization was sued?

How many suits, if any, have you settled out court within the past five years?

How many suits, if any, have you successfully defended in the past 5 years?

How seriously has your liability coverage been affected by these suits?

Approximately one association in twenty (5%) has been sued, within the past five years, on a directors and officers liability question. The majority of organizations have been sued once, but one in four have experienced multiple suits. In addition, it may be noted that about one in four organizations have been sued for some reason at some point in time, including 6% who were sued within the past five years for some reason other than D & O liability.

The numbers reporting any involvement in suits is too small to base definite conclusions upon; however, it would appear that about half the suits are settled out of court and most are successfully defended.

		Carries D & O Insurance	
Sued on D & O Question	All Executives %	Yes %	No %
Yes	5	6	1
Once	3	4	1
Twice	1	1	0
Five or more	1	1	0
No	95	93	99
No answer	*	1	0
Total	100	100	100
Number of Interviews	(265)	(171)	(92)

*Less than one-half of one percent.

Last time organization was sued	All Executives	Carried D & O Insurance	
		Yes	No
	%	%	%
Within past year	4	5	2
1-2 years ago	3	5	0
3-4 years ago	3	5	1
5 years ago	*	0	1
More than 5 years ago	12	14	8
Never	74	67	87
No answer	4	4	1
Total	100	100	100
Number of Interviews	(265)	(171)	(92)

Of those sued for any reason in the past five years 18% report their liability coverage has been very or fairly serious affected by these suits.

	Organization sued in past five years
	%
Liability coverage affected. ..	
Very seriously	11
Fairly seriously	7
Not too seriously	50
Not at all seriously	50
Don't know	11
Total	100
Number of Interviews	(28)

*Less than one-half of one percent.

Bias on Underwriters

The Question: **Have you incurred a bias on underwriters due in part to the technical nature of your profession?**

About one in four association executives report having incurred a bias on underwriters due to the technical nature of their profession. Those who report the liability situation has had an effect on leadership are more likely than the norm to report incurring an underwriters bias.

Incurred bias on underwriters	All Executives	Liability effected leadership	
		Yes	No
	%	%	%
Yes	23	46	18
No	69	50	73
Don't know	8	4	9
Total	100	100	100
Number of Interviews	(265)	(52)	(213)

Effect of Liability on Relations with Chapters

The Question: **Have changes in liability coverage changed relations with chapters of your association?**

If yes, in what ways?

Are you able to secure coverage for your chapters?

One in ten (10%) report that changes in liability coverage have changed relations with association chapters. While the number is small it may be of value to look at the changes reported. A third report initiating programs or monitoring to reduce the risk of liability. Others report discontinuing chapters, requiring chapters to pay for their own insurance or increased financial management.

Changed relations with chapters	All Executives %	Liability effected Leadership Yes %	 No %
Yes	10	19	7
Programs to reduce risks	3	6	3
Have gotten much more conscientious watching all levels of chapter activities; started a risk management program; Made chapters more sensitive to liability			
Provide liability insurance	2	4	1
Incorporated liability insurance for chapters under national policy; Got them liability insurance; Are required to cover chapters, independent D&O coverage in effect			
No longer part of national insurance	2	6	*
Had to distance from the chapters because of this; Cut them loose and they are on their own; Are not part of us anymore, they had to establish a new structure			
Increased financial management	2	0	2
Are starting to write guidelines for them concerning financial matters; Increased financial management; Greater audit and fiscal control			

continued. . . .

Changed relations with chapters	All Executives %	Liability effected Leadership Yes %	 No %
Chapters pay own insurance	1	2	*
Require they carry their own liability coverage when conducting an activity using the organizations name or under our umbrella; They have had to pay more of their share of directors and officers insurance			
Strengthen relationship	1	0	1
Because of group plan have had strengthening of relationship; Have strengthened affiliation agreement			
Strained relationship	1	2	*
Strained relationship by raising concern at the chapter level which is very difficult; Caused some hard feelings			
Tax laws	1	2	*
Had to change membership requirements for the tax laws; Has to do with tax laws			
No	70	62	72
Don't know	20	19	21
Total	100	100	100
Number of Interviews	(265)	(52)	(213)

Less than half (36%) of the association executives report they are able to secure coverage for their chapters; however, a large proportion (46%) could not answer the question.

Able to secure coverage for chapters	All Executives %
Yes	36
No	18
No answer	46
Total	100
Number of Interviews	(265)

Indemnification of Directors and Volunteers

The Question: Do you indemnify your Board of Directors in the Bylaws?

Do you indemnify your volunteers as well?

A majority of associations (58%) indemnify their board of directors. However, less than half (32%) indemnify volunteers. Organizations with D&O insurance are more likely than others to indemnify board members and volunteers. Those reporting the liability crisis has affected leadership also are more liking to indemnify board members.

Indemnify Board of Directors	All Executives	Carries D&O Insurance		Liability effected Leadership	
		Yes	No	Yes	No
	%	%	%	%	%
Yes	58	64	48	65	56
No	35	29	43	25	37
No answer	7	7	9	10	7
Total	100	100	100	100	100
Number of Interviews	(265)	(171)	(92)	(52)	(213)

Indemnify Volunteers	All Executives	Carries D&O Insurance		Liability effected Leadership	
		Yes	No	Yes	No
	%	%	%	%	%
Yes	32	37	25	35	32
No	59	54	66	59	58
No answer	9	9	9	6	10
Total	100	100	100	100	100
Number of Interviews	(265)	(171)	(92)	(52)	(213)

Effect of Liability Exposure on Volunteer Leaders

The Question: **Have any potential volunteer leaders withheld their services to your organization due to concern over liability exposure?**

Have any volunteer leaders resigned due to concern over the liability situation?

Has the number of volunteers actively participating in the leadership of your organization declined as a result of the liability situation in the past three years?

Association executives were asked a series of questions concerning the possible effects of the liability crisis on volunteer leaders. About one in five executives (20%) perceive some change as a result of the potential exposure to liability. The most common effect is the withholding of services to the association. Eighteen percent report that, due to concern over liability exposure, potential leaders withheld their services to the organization. A little less than one in ten (8%) report resignations as a result of concern over liability issues. Related to the reported resignation six percent have seen a decline in the number of volunteers in the past three years related to the liability situation. Finally, seven percent believe the quality of volunteers in their organization has suffered due to liability questions.

	All Executives %
Potential volunteer leaders have . . .	
Withheld services	18
Resigned	8
Declined in number	6
None of the above	80
Number of Interviews	(265)

Effect of Liability Exposure in Other Volunteers

The Questions: **Has the number of individuals volunteering time for service roles in your organization declined as a result of the liability situation in the past three years?**

Has the quality of volunteer leaders in your organization suffered due to liability questions?

As one might anticipate, organizations reporting the liability crisis has effected leadership are more likely than others to report a decline in volunteers and relatedly, a decline in the quality of volunteer workers.

		Carries D&O Insurance		Liability Effected Leadership	
Individual Volunteers declined	All Executives %	Yes %	No %	Yes %	No %
Yes	6	4	10	29	*
No	91	93	87	67	97
Can't say	3	3	3	4	3
Total	100	100	100	100	100
Number of Interviews	(265)	(171)	(92)	(52)	(213)

*One-half of one percent.

		Carries D&O Insurance		Liability Effected Leadership	
Quality suffered	All Executives %	Yes %	No %	Yes %	No %
Yes	7	5	10	31	1
No	91	93	88	65	98
Can't say	2	2	2	4	1
Total	100	100	100	100	100
Number of Interviews	(265)	(171)	(92)	(52)	(213)

Summary of findings based on interviews with volunteer board members.

Affect of Liability Crisis

The Question: **Overall, how would you say the liability crisis has affected your participation in not-for-profit organizations?**

One in five board members (21%) report the liability situation facing voluntary organizations has made them more concerned about serving on boards of directors. One in ten (10%) either carry insurance or verify that the organization carries liability insurance. A small proportion (3%) have become more selective in their participation and 2% have resigned or refused to serve on a board as a consequence of their concern. However, seven in ten (69%) report no negative effect.

Liability Crisis Affect

	%	
More concerned (net)	21	
Cause for concern/more cautious (have to be more cautious; has not stopped volunteering; has not affected actions, but has generated a sense of concern)		18
Hesitancy in joining (reluctant to join new boards; tougher to get people to work for non-profit organizations; leery of volunteering)		3
Fear being sued (concerned for individual suits; look into risk liability; felt personal exposure)		2
References to insurance (net)	10	
Must have insurance coverage (refusal to serve if proper insurance not available; will serve on boards that have coverage; make sure directors are covered)		5
Increased cost of insurance (costing more money for insurance; premiums have escalated; created financial problems)		3
Carry insurance		3
More selective (net)	3	
Seek legal counsel (go to an attorney before making statements; talk with attorney before serving)		6
Check on organization/board member (check before joining; check every-thing out; find out how they operate; ask about policies before joining)		3
Resigned/will not participate	2	
Other	3	
No negative affect	69	
Can't say	2	
Number of Interviews	(359)	

Inquiries Concerning Liability Coverage

The Questions: **When asked to volunteer as a board member, do you inquire into the organization's liability coverage before making a decision to serve?**
Do you research the organization's history of lawsuits before volunteering?

Nearly half (48%) the board members question the organization's liability coverage before making a decision to sit on a board. Perhaps because of their greater experience, or greater potential exposure to suits, those who have been board members for a long period of time or have membership on more than one board are more likely to raise questions about liability before accepting a seat on the board.

Approximately one in four directors (23%) report researching the organization's history of lawsuits prior to volunteering. Again, it is the volunteer with more years of experience or multiple board membership who is most likely to look into the organization's past history.

Inquiries Concerning Liability Coverage

		Length of Board Membership			Number of Organizations*		
Inquire into Liability Coverage	Total %	2 years or less %	3-6 Years %	7+ Years %	Only 1 %	2-3 %	4+ %
Yes	48	42	47	56	34	53	54
No	51	57	53	41	65	46	43
Don't know	1	1	-	3	1	1	3
Total	100	100	100	100	100	100	100
Number of Interviews	(359)	(131)	(107)	(121)	(108)	(151)	(100)

Researching Organization's History of Lawsuits

		Length of Board Membership			Number of Organizations		
Research Organization's History of Lawsuits	Total %	2 years or less %	3-6 Years %	7+ Years %	Only 1 %	2-3 %	4+ %
Yes	23	17	26	26	17	26	23
No	76	83	71	74	81	73	77
Don't know	1	-	3	-	2	1	-
Total	100	100	100	100	100	100	100
Number of Interviews	(359)	(131)	(107)	(121)	(108)	(151)	(100)

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*Number of organizations for which respondent is a board member.

Criteria Used in Research of Organization's History

The Question: **What criteria do you use in your research of an organization's history?**

Among those who look into the organization's history the most common approach, taken by about one in four, is to consult with other board members. Almost as many consider the stability of the organization (22%). Slightly less than one in five (17%) consider the quality of the current board members and as many consider the organization's current insurance coverage. The full distribution of factors considered are shown in the table below.

Criteria Used in Research of Organization's History

Criteria Used	Total %
Consultation with members (e.g., check with administration staff)	27
Stability of organization (e.g., how long established; the organization itself)	22
Quality of board member (e.g., quality of people on board now & in the past; knowing about the leaders of the organization)	17
Insurance coverage (e.g., whether or not they are insured; if they carry liability; consult insurance representative)	16
General reputation/word of mouth (e.g., asking around in community; word of mouth; ask community leaders)	11
Type of service/activity provided (e.g., if they do good work; look at what they have to offer; primary purpose)	9
Organization records (e.g., go to records; minutes of meetings)	7

Criteria Used to Research Organization's History

Criteria Used	Total %
Legal counsel (e.g., check with legal counsel; our lawyers follow through the liability clause; state courts)	7
Financial background (e.g., ask to look at financials for 3 years; financial status; auditors reports)	6
Media (e.g., check newspaper stories)	3
Other involvement (e.g., usually on a committee so I can research well)	1
Potential for lawsuits (e.g., area of risks; probability of exposure of liability)	6
Number of Interviews	(81)

Perceived Changes in Volunteer Board Members

The Questions: In the past few years have you noticed any of the following regarding volunteer board members...
fewer willing to volunteer or serve?
volunteers are more cautious about what they do or say?

About half the volunteer board members(49%) report that they see fewer willing to volunteer to serve on boards of directors. A much larger proportion (72%) report volunteers are more cautious in what they do or say.

Fewer Willing to Volunteer or Serve

		Length of Board Membership			Number of Organizations		
	Total	2 years or less	3-6 Years	7+ Years	Only 1	2-3	4+
	%	%	%	%	%	%	%
Yes	49	47	48	52	49	47	53
No	49	50	51	46	47	52	46
Don't know	2	3	1	2	4	1	1
Total	100	100	100	100	100	100	100
Number of Interviews	(359)	(131)	(107)	(121)	(108)	(151)	(100)

Volunteers More Cautious About What They Say or Do

		Length of Board Membership			Number of Organizations		
	Total	2 years or less	3-6 Years	7+ Years	Only 1	2-3	4+
	%	%	%	%	%	%	%
Yes	72	69	74	74	67	77	70
No	27	28	26	26	31	22	29
Don't know	1	3	-	-	2	1	1
Total	100	100	100	100	100	100	100
Number of Interviews	(359)	(131)	(107)	(121)	(108)	(151)	(100)

Withholding of Volunteer Services

The Question: **Have you ever withheld your volunteer services due to fear of liability?**

One in six board members (16%) report withholding their services due to fear of liability. Those who serve on several boards, as one might expect, are more likely to report such an experience. It should also be noted that since the survey is of currently active board members there is no measure of the proportion of board members who have completely withdrawn from volunteer activity due to concern for liability.

Withholding of Volunteer Services

		Length of Board Membership			Number of Organizations		
	Total %	2 years or less %	3-6 Years %	7+ Years %	Only 1 %	2-3 %	4+ %
Yes	16	16	13	20	14	17	19
No	84	84	87	80	86	83	81
Total	100	100	100	100	100	100	100
Number of Interviews	(359)	(131)	(107)	(121)	(108)	(151)	(100)

Experience with Lawsuits

The Question: Have you ever been sued as a volunteer of a not-for-profit organization?

Relatively few board members (2%) report having been sued as a volunteer for a not-for-profit organization. As one might anticipate, board members who have served a long time or who serve on several boards are more likely than the less experienced to report being sued.

Experience with Lawsuits

		Length of Board Membership			Number of Organizations		
	Total %	2 years or less %	3-6 Years %	7+ Years %	Only 1 %	2-3 %	4+ %
Ever Been Sued							
Yes	2	1	1	4	0	2	4
No	98	99	99	96	100	98	96
Total	100	100	100	100	100	100	100
Number of Interviews	(359)	(131)	(107)	(121)	(108)	(151)	(100)

Current Liability Coverage

The Question: **Does your employer provide liability coverage for your volunteer service?**
Do you carry personal coverage for liability?

Seven in ten board members (72%) carry some type of liability coverage. Slightly more than one in four volunteer board members (27%) report their employer provides liability coverage for their volunteer service. This is particularly true of volunteers who serve on several boards or who have served for a long period of time.

Many more volunteers (62%) report carrying personal liability coverage.

Current Liability Coverage

		Length of Board Membership			Number of Organizations		
	Total	2 years or less	3-6 Years	7+ Years	Only 1	2-3	4+
	%	%	%	%	%	%	%
Net liability coverage	72	62	78	76	63	73	79
Personal Coverage	62	51	72	66	54	65	66
Employer provides coverage	27	20	30	33	23	22	41
None	28	38	22	24	37	27	21
Total	100	100	100	100	100	100	100
Number of Interviews	(359)	(131)	(107)	(121)	(108)	(151)	(100)

SAMPLING TOLERANCES

In interpreting survey results, it should be borne in mind that all sample surveys are subject to sampling error, that is, the extent to which the results may differ from what would be obtained if the whole population had been interviewed. The size of such sampling errors depends largely on the number of interviews.

The following tables may be used in estimating the sampling error of any percentage in this report. The computed allowances have taken into account the effect of the sample design upon sampling error. They may be interpreted as indicating the range (plus or minus the figure shown) within which the results of repeated samplings in the same time period could be expected to vary, 95 percent of the time, assuming the same sampling procedures, the same interviewers, and the same questionnaire.

The first table shows how much allowance should be made for the sampling error of a percentage:

Recommended Allowance for Sampling Error of a Percentage

In Percentage Points (at 95 in 100 confidence level)*

	Sample Size						
	350	250	125	100	75	50	25
Percentages Near 10	3	4	5	6	7	8	12
Percentages Near 20	4	5	7	8	9	11	16
Percentages Near 30	5	6	8	9	10	13	18
Percentages Near 40	5	6	9	10	11	14	19
Percentages Near 50	5	6	9	10	11	14	20
Percentages Near 60	5	6	9	10	11	14	19
Percentages Near 70	5	6	8	9	10	13	18
Percentages Near 80	4	5	7	8	9	11	16
Percentages Near 90	3	4	5	6	7	8	12

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*The chances are 95 in 100 that the sampling error is not larger than the figures shown.

The table would be used in the following manner: Let us say a reported percentage is 33 for a group which includes 350 respondents. Then we go to row "percentages near 30" in the table and go across to the column headed "350". The number at this point is 5, which means that the 33 percent obtained in the sample is subject to a sampling error of plus or minus 5 points. Another way of saying it is that very probably (95 chances of 100) the true figure would be somewhere between 28 and 38, with the most likely figure the 33 obtained.

In comparing survey results in two samples, such as, for example, men and women, the question arises as to how large a difference between them must be before one can be reasonably sure that it reflects a real difference. In the tables below, the number of points which must be allowed for in such comparisons is indicated.

Two tables are provided. One is for percentages near 20 or 80; the other for percentages near 50. For percentages in between, the error to be allowed for is between those shown in the two tables.

Recommended Allowance for Sampling
Error of the Difference
In Percentage Points
(at 95 in 100 confidence level)*

TABLE A

	Percentages near 20 or 80					
Size of Sample	175	125	100	75	50	25
175	8					
125	9	10				
100	10	11	11			
75	11	11	12	13		
50	12	13	14	14	16	
25	17	17	18	18	19	22

TABLE B

	Percentages near 50					
Size of Sample	175	125	100	75	50	25
175	10					
125	11	12				
100	12	13	14			
75	14	14	15	16		
50	16	16	17	18	20	
25	21	21	22	23	24	28

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*The chances are 95 in 100 that the sampling error is not larger than the figures shown.

Here is an example of how the tables would be used: Let us say that 55 percent of men responded a certain way and 40 percent of women respond that way also, for a difference of 15 percentage points between them. Can we say with any assurance that the 10-point difference reflects a real difference between men and women on the question? Let us consider a sample which contains approximately 125 men and 125 women.

Since the percentages are near 50, we consult Table B, and since the two samples are 125 persons each, we look for the number 12 here. This means that the allowance for error should be 12 points, and that in concluding that the percentage among men is somewhere between 3 and 27 points higher than the percentage among women we should be wrong only about 5 percent of the time. In other words, we can conclude with considerable confidence that a difference exists in the direction observed and that it amounts to at least 3 percentage points.

If, in another case, men's responses amount to 22 percent, say, and women's 24 percent, we consult Table A because these percentages are near 20. We look for t number in the column headed "125" which is also in the row designated "125" and see that the number is 10. Obviously, then, the two-point difference is inconclusive.

Senator **Heflin**. Dr. Hale?

STATEMENT OF DR. CREIGHTON J. HALE

Dr. **Hale**. Mr. Chairman, Senator Thurmond, I appreciate the opportunity to address you on a critical problem which could lead to the demise of Little League Baseball and other nonprofit amateur sports programs.

I respectfully urge the committee to support legislation exempting volunteers conducting youth athletic programs from civil liability under most circumstances.

Today, I speak to you as the president and chief executive officer of Little League Baseball, the world's largest organized youth sports program, and also the chairman of the Youth Volunteer Sports Coalition, which consists of the most popular and prestigious amateur sports organizations in the United States, all of whom are dependent upon adult volunteers, the heart of their organization.

The coalition includes members offering amateur baseball, softball, soccer, football, hockey, swimming, archery, diving, rowing, table tennis, volleyball, and weightlifting.

Our most critical problem is protecting the adult volunteer, the key to our organization, from exposure of liability suits. At a time when the volunteer sector is being called upon to assume greater responsibility in meeting the social needs of this country, the pervasive fear of personal liability among volunteers takes on an even greater urgency.

It is understandable that adults would decline to manage or coach Little League Baseball, knowing that they would be exposed to potential suits if someone is injured sliding into base; two players collide in the outfield; a player sustains facial injuries due to his misjudgment of a thrown ball; a player is bitten by a stray dog, or a player is injured after being assigned to a position other than the one that he or she normally plays.

When I was a kid playing baseball and was injured, my parents didn't look for a scapegoat to sue; they assumed there was an inherent risk in playing the game. Now, because of the litigious nature of our society, parents frequently sue the manager, coach and other league officials when their son or daughter is injured.

We need legislation to protect the volunteers who fear the civil liability litigation.

It must be clearly understood that we are not discussing or seeking relief for doctors, municipalities, bar owners, manufacturers, or day care centers, where everyone involved in these operations or professions is paid. In sharp contrast, we are talking about adults who, through the goodness of their hearts and concern for youth, knowing they will not be compensated for their efforts, volunteer to be involved in a nonprofit amateur sports program.

Eleven States, through the efforts of Little League Baseball and of the coalition, have enacted civil liability immunity legislation for volunteers involved in the amateur sports programs. These include Delaware, Colorado, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Nebraska, New Jersey, Pennsylvania, and Texas. However, these bills are not uniform. We desperately need civil liability immunity legislation in all 50 States of our Nation which is uniform and which will protect the adult volunteer from frivolous lawsuits.

In pointing out specific cases of what really happens in Little League Baseball that creates a liability exposure, the one that received the greatest attention was in New Jersey, when a manager reassigned a shortstop, a 10 year-old player, from that position to the outfield. In playing the outfield, a fly ball to him was misjudged, it struck him in the eye, and he was injured. The parents sued the manager because he failed to recognize that this 10 year-old boy was a born infielder.

The phone rang off the hook in my office and the other offices because the people were frightened. They said, "What are you going to do to prevent us from being sued because we place players in different positions?" They called before we even knew there was a suit. This was settled out of court, but even the settlement, which was not a large settlement, the fact remained that it put fear and a very chilling effect upon these people who are trying to run a program which benefits their youth.

Here is the case of a player's father, who was his coach, was on the field when lightning on a relatively clear day struck this boy. They sued the league for failure to check the atmospheric conditions with the weather man prior to the practice.

Parents sued because their son was not drafted into a level of play where they thought he should participate.

A volunteer, after sustaining an eye injury while using a hammer supplied by the League, sued because he was not properly advised on how to use a hammer.

A batter was injured by a pitched ball and sued the manager for assigning the player to pitch.

A player sued because of an eye injury sustained when he was hit by a rock thrown by another player.

These are only a few of many cases where we had received the summons and complaints through our office.

I want to thank you for hearing me today, and on behalf of Little League Baseball and the Youth Sports Coalition and all volunteer activity, I urge the committee to support Senate bill S. 929.

Thank you.

[Dr. Hale submitted the following material for the record:]

EXECUTIVE SUMMARY
OF
DR. CREIGHTON J. HALE

There is a crisis in amateur sports programs and many other activities operated by adult volunteers. Frivolous lawsuits have had a chilling effect for those donating their time and services to provide competitive sports for our youth. There is a pervasive fear of personal liability among volunteers who are the very heart of amateur sports programs. Should these adults refuse to volunteer because of the insidious threats of liability exposure, our amateur sports programs will collapse and millions of our youth will be denied the benefits of organized competitive sports.

It should be clearly understood we are not seeking relief for doctors, municipalities, bar owners, manufacturers or day care centers where everyone involved in these operations of professions is paid. We are talking about adults who, through the goodness of their hearts and concern for youth, knowing they will not be compensated for their efforts, volunteer to be involved in a non-profit amateur sports program.

Non-profit amateur sports programs need legislation--legislation that will reduce the cost of liability insurance--and more importantly, legislation that will provide immunity for adult volunteers from civil liability for their good faith actions on behalf of their organizations provided the damage or injury was not caused by wilful or wanton misconduct.

Eleven states have enacted civil liability immunity legislation for volunteers active in amateur sports programs. However, these bills are not uniform. We need civil liability immunity legislation in all 50 states which is uniform and which will safeguard the adult volunteer from frivolous lawsuits.

Senate Bill S. 929 is this legislation and I urge the Committee to support this bill.

TESTIMONY

on

THE VOLUNTEER PROTECTION ACT OF 1987

Mr. Chairman, members of the Committee, I appreciate the opportunity to address you on a critical problem which could lead to the demise of Little League Baseball and other non-profit amateur sports programs. I respectfully urge the Committee to support legislation exempting volunteers conducting youth athletic programs from civil liability under most circumstances.

Today I speak to you as President and Chief Executive Officer of Little League Baseball, Incorporated and as Chairman of the Youth Sports Volunteer Coalition which consists of the most popular and prestigious amateur sports organizations in the United States, all of whom are dependent upon adult volunteers, the heart of their organizations. The Coalition includes members offering amateur baseball, softball, soccer, football, hockey, swimming, archery, diving, rowing, table tennis, volleyball and weightlifting.

Although the primary focus of the liability crisis in our country has been on doctors, hospitals, nurses, day care centers, teachers, school districts, municipalities, truckers, tavern owners, toxic waste handlers, manufacturers, immunization programs and corporate owners and directors, non-profit amateur sports organizations are also confronted with the same problems of increased rates, often by several hundred per cent; policies not being renewed; limits being reduced; deductibles being increased; coverages restricted and in some cases insurance not available at any price. In Little League Baseball, the liability rate has increased from $75.00 to $795.00 in the past five years. Many leagues cannot pay $795.00, so operate bare or discontinue their Little League program.

An even more critical problem confronting non-profit amateur sports is protecting the adult volunteers, the key to many youth sports organi-

zations, from exposures to frivolous liability suits. At a time when the volunteer sector is being called upon to assume greater responsibility in meeting the social needs of this country, the pervasive fear of personal liability among volunteers takes on an even greater urgency.

It is understandable that adults would decline to manage or coach in Little League Baseball knowing they would be exposed to potential suits if someone is injured sliding into base, two players collide in the outfield, a player sustains facial injuries due to his misjudgment of a thrown ball, a player is bitten by a stray dog or a player is injured after being assigned to a position other than he or she normally plays. When I was a kid playing baseball and was injured, my parents did not look for a scapegoat to sue. They assumed there was an inherent risk in playing the game. Now, because of the litigious nature of our society, parents frequently sue the manager, coach or other league officials when their son or daughter is injured.

In summary, there is a crisis in Little League Baseball and other non-profit amateur sports programs. The crisis is twofold: (1) liability insurance is becoming unattainable or at such costs to be unaffordable. (2) Our ability to retain volunteer assistance is threatened by the fear of civil liability litigation. We must reduce the chilling effect of liability exposure for those donating their time and services to non-profit sports activities. If protection from nuisance suits is not provided, we will lose our volunteers, our amateur sports programs will collapse and our youth denied the benefits of organized competitive sports.

It must be clearly understood we are not discussing or seeking relief for doctors, municipalities, bar owners, manufacturers or day care centers where everyone involved in these operations or professions is paid. In *sharp contrast, we are talking about adults who, through the goodness of their hearts and concern for youth, knowing they will not be compensated for their efforts, volunteer to be involved in a non-profit amateur sports program.*

Non-profit amateur sports organizations, and in fact all volunteer activities, need legislation--legislation that would reduce the cost of liability insurance--legislation that would safeguard volunteers in any action brought in a court on the basis of an act or omission resulting in damage or injury to any person if the volunteer was acting in good faith and within the scope of his or her official function and duties with the organization, and the damage or injury was not caused by wilful or wanton misconduct.

Eleven states have enacted civil liability immunity legislation for volunteers involved in amateur sports programs. These include Delaware, Colorado, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Nebraska, New Jersey, Pennsylvania and Texas. However, these bills are not uniform. We desperately need civil liability immunity legislation in all 50 states of our nation which is uniform and which will protect the adult volunteer from frivolous lawsuits.

Thank you for hearing me today. On behalf of Little League Baseball, the Youth Sports Volunteer Coalition and all other volunteer activities, I urge the Committee to support Senate Bill S. 929.

Dr. Creighton J. Hale

LITTLE LEAGUE BASEBALL, INCORPORATED
WILLIAMSPORT, PENNSYLVANIA

OFFICE OF THE PRESIDENT
AND CHIEF EXECUTIVE OFFICER

November 18, 1988

Ms. Monique Abacherli
Chief Clerk
Subcommittee on Courts and
Administrative Practice
223 Hart SOB
Washington, DC 20510

Dear Ms. Abacherli:

Enclosed are my responses to questions forwarded to me by you November 10, 1988. In a few instances, it is not possible for me to reply since I am without knowledge or information sufficient to answer the question.

Sincerely,

CREIGHTON J. HALE
President and
Chief Executive Officer

CJH/bg
Enc:

QUESTIONS FOR PANEL CONCERNING THE VOLUNTEER PROTECTION ACT:
From Senator Heflin

1. SOME PEOPLE HAVE QUESTIONED THE NEED FOR THE VOLUNTEER PROTECTION ACT, ARE THERE PEOPLE OUT IN THE COUNTRY WHO ARE REFUSING TO VOLUNTEER FOR NONPROFIT ORGANIZATIONS BECAUSE OF THE THREAT OF BEING SUED?

YES

2. HOW MANY STATES HAVE ADDRESSED THE ISSUE OF VOLUNTEER LIABILITY?

APPROXIMATELY 20

3. WHY SHOULD WE TELL THE STATES WHAT TYPE OF VOLUNTEER PROTECTION LAWS THEY SHOULD HAVE?

TO ASSURE UNIFORMITY

4. IF VOLUNTEER ORGANIZATIONS THEMSELVES ENCOURAGED RISK MANAGEMENT PRACTICES AMONG THEIR MEMBERS WOULD THAT - BY ITSELF - ALMOST TOTALLY SOLVE THE PROBLEMS FACED BY VOLUNTEERS?

NO

5. DO ANY OF YOU HAVE ANY DATA ON THE NUMBER OF CLAIMS MADE AGAINST VOLUNTEERS AND THE NUMBER AND AMOUNT OF CLAIMS ACTUALLY PAID?

LITTLE LEAGUE BASEBALL WAS NOT INVOLVED IN PROCESSING CLAIMS AND THEREFORE DOES NOT HAVE DATA ON THE NUMBER OF CLAIMS MADE AGAINST VOLUNTEERS.

6. SHOULD THE PROVISION OF THE BILL PUNISHING THE STATES FOR NOT ENACTING LEGISLATION TO PROTECT VOLUNTEERS (BY IMPOSING A 1% REDUCTION IN THE STATES ALLOTMENT UNDER THE SOCIAL SERVICES BLOCK GRANT PROGRAM) BE CHANGED TO A BONUS OF 1% FOR STATES WHICH ENACT LAWS PROTECTING VOLUNTEERS?

YES

7. DO EACH OF YOU KNOW MEN AND WOMEN WHO HAVE REFUSED TO VOLUNTEER THEIR TIME BECAUSE OF THE THREAT OF POTENTIAL LIABILITY?

LITTLE LEAGUE DOES NOT HAVE SPECIFIC NAMES OF MEN OR WOMEN WHO HAVE REFUSED TO VOLUNTEER, BUT HAS RECEIVED MANY CALLS FROM INDIVIDUALS STATING THAT THEY WOULD NOT VOLUNTEER UNLESS PROTECTED FROM FRIVOLOUS LIABILITY LITIGATION.

8. DO YOU BELIEVE THAT S. 929 WILL HELP MAKE LIABILITY INSURANCE MORE AFFORDABLE FOR NONPROFIT ORGANIZATIONS?

YES

9. DO YOU BELIEVE THAT VOLUNTEERS WHO DRIVE MOTOR VEHICLES FOR THEIR ORGANIZATIONS SHOULD BE COVERED BY THIS BILL?

NO

10. ONE OF THE FINDINGS OF THIS BILL STATES THAT "WITHIN CERTAIN STATES, THE WILLINGNESS OF VOLUNTEERS TO OFFER THEIR SERVICES HAS BEEN INCREASINGLY DETERRED BY A PERCEPTION THAT THEY THEREBY PUT PERSONAL ASSETS AT RISK IN THE EVENT OF LIABILITY ACTIONS AGAINST THE ORGANIZATIONS THEY SERVE", DO YOU BELIEVE THAT THE ONLY WAY TO GET RID OF THIS "PERCEPTION" IS TO ENACT THIS BILL?

YES

QUESTIONS
PANEL III

From Senator Grassley

CAN YOU EXPLAIN WHY THIS ACT IS NECESSARY? *TO ASSURE THAT THE VOLUNTEERS WILL CONTINUE TO OFFER THEIR SERVICES AND TO MAKE LIABILITY INSURANCE MORE AFFORDABLE.*

THE BILL ESTABLISHES A SANCTION IMPOSED ON THOSE STATES THAT DO NOT ENACT SUCH LEGISLATION, DOES IT NOT?

YES

WOULD YOU EXPLAIN HOW THE DENIAL OF SOCIAL SERVICES BLOCK GRANT FUNDS WOULD OPERATE?

NO KNOWLEDGE SUFFICIENT TO ANSWER.

HOW WAS IT DETERMINED TO USE THIS BLOCK GRANT AS THE "CARROT" TO "ENCOURAGE" THE STATES TO ENACT SIMILAR LEGISLATION?

NO KNOWLEDGE SUFFICIENT TO ANSWER.

WHAT IS "SUBSTANTIAL COMPLIANCE" AND WHAT CRITERIA WILL BE USED BY THE SECRETARY OF HEALTH AND HUMAN SERVICES TO CERTIFY THAT A STATE HAS ENACTED LEGISLATION THAT "SUBSTANTIALLY COMPLIES" WITH SECTION 4(a) OF THE ACT?

NO KNOWLEDGE SUFFICIENT TO ANSWER.

THE WITHOLDING OF FEDERAL FUNDS FROM THE STATES TO FORCE COMPLIANCE WITH THE WISHES OF THE FEDERAL GOVERNMENT, IS AN EXTRAORDINARY REMEDY -- ONLY TO BE USED IN THOSE INSTANCES IN WHICH A UNIFORM, NATIONAL POLICY HAS BEEN DETERMINED TO BE THE BEST COURSE OF ACTION FOR THE COUNTRY. I, FOR ONE, AM USUALLY EXTREMELY RELUCTANT TO USE SUCH AN APPROACH TO COERCE THE STATES INTO TAKING A CERTAIN COURSE OF ACTION.

N/A

WHY IS THIS ISSUE SUCH AN INSTANCE IN WHICH IT IS IMPERATIVE THAT A NATIONAL POLICY BE ESTABLISHED IN SUCH A MANNER?

TO ASSURE THAT EVERY STATE WILL ENACT LEGISLATION.

AS YOU MAY BE AWARE, IN 1987, IOWA ENACTED LEGISLATION TO PROTECT VOLUNTEERS WITHIN ITS JURISDICTION. IT IS MY UNDERSTANDING THAT THIS LAW EXEMPTS DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, TRUSTEES, OR VOLUNTEERS OF NON-PROFIT ORGANIZATIONS FROM THE DEBTS OR OBLIGATIONS OF THE ORGANIZATION.

AM NOT AWARE.

IT ALSO EXEMPTS THE SAME GROUP FROM LIABILITY FOR ACTS OR OMISSIONS PERFROMED WITHIN THE PERSON'S DUTIES FOR THE ORGANIZATION, OR FOR A MUNICIPALITY OR ITS SUBDIVISIONS, EXCEPT THOSE ACTS OR OMISSIONS THAT INVOLVE INTENTIONAL MISCONDUCT OR A KNOWING VIOLATION OF THE LAW.

ARE YOU FAMILIAR WITH THIS IOWA ACT?

NO

HOW MANY STATES HAVE SIMILAR LEGISLATION ENACTED OR PENDING?

12

GIVEN THAT A NUMBER OF THE STATES HAVE DECIDED THAT THIS AN AREA IN WHICH THEY SHOULD ENACT PROTECTIVE LEGISLATION, WHY DO WE NEED A FEDERAL LAW? - DON'T THE STATE LEGISLATURES KNOW WHAT IS BEST FOR THEIR STATES?

THE LEGISLATION WHICH HAS BEEN ENACTED BY VARIOUS STATES IS NOT UNIFORM AND DOES NOT PROVIDE COVERAGE FOR THE SAME GROUPS OF VOLUNTEERS.

QUESTIONS FOR DR. HALE
SUBMITTED BY SENATOR THURMOND

In your prepared statement, you point out that due to the litigious nature of our society, volunteers are exposing themselves to frivolous law suits. Every aspect of society has felt the effect of frivolous law suits. However, should we pass legislation which would, in effect, relieve volunteers from liability for negligent acts? In other words, when the legal suits are not frivolous?

VOLUNTEERS SHOULD NOT BE GRANTED IMMUNITY FROM ACTS OF GROSS NEGLIGENCE. THE COURT MUST DECIDE WHEN CIVIL SUITS ARE FRIVOLOUS.

Dr. Hale, you point out that many adults have declined to manage or coach in amateur sports for fear of exposing themselves to liability. Can you cite some examples of civil suits brought against coaches or managers and explain how this legislation will address these types of suits?

THE MOST FREQUENTLY MENTIONED CASE, AND THERE HAVE BEEN MANY OTHERS, OCCURRED IN NEW JERSEY WHEN A MANAGER WAS SUED BECAUSE A PLAYER WAS INJURED WHEN CHANGED FROM THE POSITION OF SHORT-STOP TO OUTFIELDER. THE VOLUNTEERS IN THIS SPECIFIC LEAGUE STATED THEY WOULD NOT CONTINUE UNLESS GRANTED IMMUNITY FROM THE SUIT WHICH THEY CONSIDERED FRIVOLOUS. THIS RESULTED IN IMMUNITY LEGISLATION BEING PASSED IN NEW JERSEY, PENNSYLVANIA AND DELAWARE.

Traditionally, areas of tort law have been left to the states. Why should the federal government intrude into an area that has generally been left to the states?

IN ORDER TO ESTABLISH A UNIFORM LAW THROUGHOUT THE 50 STATES, IT IS NECESSARY FOR THE FEDERAL GOVERNMENT TO ESTABLISH A MODEL LAW. IT IS OBVIOUS IN REVIEWING IMMUNITY LEGISLATION PASSED IN A DOZEN STATES THAT THEY VARY CONSIDERABLY FROM STATE TO STATE AND, IN SOME CASES, DO NOT PROVIDE THE IMMUNITY RELIEF NECESSARY FOR VOLUNTEERS TO CONTINUE IN PROGRAMS SUCH AS LITTLE LEAGUE BASEBALL.

Senator HEFLIN. We are going to have to leave very shortly, and we will be gone for over an hour. So if you can, Mr. Walker, summarize your testimony very rapidly. We will submit to you written questions to have a full record in this case, but we don't want to hold people unduly.

Go ahead, Mr. Walker.

STATEMENT OF KEVIN WALKER

Mr. WALKER. Mr. Chairman, Senator Thurmond, my name is Kevin Walker, and I am a member of the Riverside Mountain Rescue Unit from California.

I have served as a volunteer in this capacity for 11 years, and I would like to quickly recount an experience which resulted in a lawsuit being filed against myself and many others.

We are a volunteer nonprofit organization and have functioned in that capacity for 26½ years. Over that time, we conservatively figure we have saved over 475 lives.

Briefly, in October of 1983, we were called to aid in a rescue of a 23 year-old man who fell off a 50-foot cliff. The gentleman's name was Craig Fedborg. He and three friends had gone up into the hills above Riverside and while up there, having what we were told was a party, admitted to having alcohol, and they had a small caliber rifle with them. At some point in time, Mr. Fedborg fell off this cliff. His friends were not with him, as they claimed they went down off the mountain in different directions.

To be very brief, we were called in at 8 p.m., a day after Mr. Fedborg had fallen. We responded to the mountain, sent our technical people down to Mr. Fedborg, and on an initial survey, found that there was no feeling in his legs and only some in his hands. He had a small piece of wood in his left leg, with ants crawling in and out of it. He was seriously injured.

I was the operations leader on this particular mission, and speaking with our technical man at the injury site, it was decided to use a helicopter to airlift the gentleman out, even though it was now approaching midnight.

Mr. Fedborg was given emergency aid, immobilized, and placed in a Stokes litter. When the helicopter arrived, we set it up for what we call a short-haul evacuation. The helicopter flew over the top of the injury site, the litter was attached, and the subject was raised to the top of the mountain, and then placed in the helicopter and flown to the Loma Linda Medical Center, which is a Trauma I Center in Riverside. It was only a 5-minute flight. We were called at 8 p.m. that evening, and the mission was secured approximately at 1:30 a.m.

The following September, myself—and I won't go through the long list of people—were named in an $11 million lawsuit.

Mr. Chairman, I am a volunteer and not a legislator. It seems to me——

Senator HEFLIN. If you would complete your statement in a minute, we have got to leave.

Mr. WALKER. OK. It seems that these types of situations should not have to occur.

Senator Heflin. We are going to have to go to the vote, so we will receive your entire statement for the record, and there will be written questions submitted, and the record will stay open for submission by anybody else.

I am sorry.

The hearing that is scheduled on the Canada-United States Free Trade Agreement will start at 1:30.

[The prepared statement of Mr. Walker follows:]

PREPARED STATEMENT OF KEVIN WALKER

Mr. Chairman, members of the committee, my name is Kevin Walker and I am a member of the Riverside Mountain Rescue Unit in Southern California, which is a member of the National Mountain Rescue Association. I have served as a volunteer in this capacity for 11 years. I have been asked to appear before you today to recount an experience which resulted in a lawsuit being filed against myself and about 30 other defendants

The Riverside Mountain Rescue Unit is a volunteer based non-profit organization which has existed for 26 1/2 years. In that time we conservatively figure we have have saved over 475 lives.

The follow is a summary of:

RESCUE

Mission No. 8334M

Box Springs Mountain,

near the City of Riverside, California

On October 24, 1983 - Craig Richard Fredborg and two friends hiked up onto the Box Springs Mountain above the city of Riverside. It was later learned by the two friends that the trio had hiked up to celebrate Fredborg's birthday. They admitted to having alcohol with them, and also present was a small caliber rifle. Sometime on the 23rd Fredborg fell off of a 50 foot cliff on the mountain. Fredborg was alone as his friends had went down and home, apparently in a different direction.

On October 25, 1983, Fredborgs girl friend Jennifer Hernandez apparently made contact with the two who had been up on the mountain to ask where Fredborg was. According to the friends they went back onto the mountain where they found Fredborg laying head down on the hillside below the cliff. They stated that they turned Fredborg around and straightened him out. This of course is something that should never be attempted unless properly trained. They started a small fire and waited.

In the early evening residents below reported seeing a fire up on the mountain. CDF (California Department of Forestry responded to the top of the mountain which can be accessed by dirt road. Once on scene it was found that emergency aid would be needed. The Riverside County Sheriff's Department was contacted, as was Goodhew Ambulance service. At 8:00 PM the Riverside Mountain Rescue Unit was contacted and asked to respond.

Ten members initially arrived. Two technical climbers were sent down, approximately 400 feet from the top, to make contact with the subjects. On the initial survey it was obvious that serious injuries were present. Fredborg had no feeling in his legs, and only some in his hands and arms. He had a small piece of wood impaled in his leg with ants crawling in the wound.

A safety hand line was put out and another member guided a paramedic down to Fredborg. Another RMRU member to arrive was a doctor who immediately went down to the subject.

As medical aid was being given, Bernie McIlvoy (down with the subject) and Kevin Walker discussed what form of evacuation would be best for the subject. It was decided that a helicopter evac would indeed be the smoothest way out for Fredborg. Normally the operation would have to hold until daylight. But because of the seriousness of the injuries the decision was made to do a night pick-up.

Don Landells of Landells Aviation was contacted, and agreed to respond with a Bell Jet Ranger. Fredborg was given emergency aid, immobilized and placed in a stokes litter. When the helicopter arrived, it was rigged for a short haul evacuation. The pilot then lifted off and maneuvered over where the rescuers were with Fredborg. Once in position the litter which was rigged for a horizontal lift, was attached. The helicopter then raised up and was quickly back on the top of the mountain. Rescuers on top received the litter and the pilot set the helicopter down.

The litter containing Fredborg was placed in the rear of the helicopter. Team member Kevin Walker and a second paramedic accompanied Fredborg in the back. The subject was then flown to Loma Linda Medical Center which was a five minute flight from the Box Springs Mountain. Fredborg was transferred to the care of doctors there.

The rescue operation was secured at approximately 1:30 AM on October 26, 1983.

The following September I was named in an $11 million dollar lawsuit along with my father, who was not even present, but was president of the unit at that time, other members of our team, the pilot Don Landells and his business, Riverside County, San Bernardino County, the city of Riverside, Loma Linda Medical Center, Riverside Community Hospital, Riverside Police Department, the paramedics present, the California Department of Forestry, and more.

Senators, I am not a legislator, I am a commercial printer who believes in volunteer search and rescue. The key is **VOLUNTEER**. Please take time to help those who wish to help others. Thank you for your time, and I would also like to enter the follow attached articles for your consideration. Again thank you.

Senator **Thurmond**. Mr. Chairman, I want to just say a word.

I want to commend Mr. MacDougall, Dr. Hale, Mr. Able and Mr. Walker for not only being volunteers, but for trying to look after these volunteers.

You know, when I was Governor, we had an arm of the Governors' Association called the Council of State Governments, and they would prepare bills that they felt each State should adopt, such as negotiable instruments and some on divorce. But both those matters are with the State level and not at the Federal level.

I wonder if you have thought about maybe getting this Council of State Governments to prepare a bill on volunteerism that could be adopted by each State, just as Illinois has already adopted one. It seems to me that might be the proper approach, rather than coming to Congress, because the procedure here is questionable.

I just want to congratulate you on the service you are rendering as volunteers.

Senator **Heflin**. The subcommittee stands adjourned.

[Whereupon, at 11:40 a.m., the subcommittee was adjourned.]

APPENDIX

ADDITIONAL STATEMENTS

American Hospital Association

Capitol Place, Building #3
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Suite 1100
Washington, D.C. 20001
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STATEMENT
OF THE AMERICAN HOSPITAL ASSOCIATION
ON THE VOLUNTEER PROTECTION ACT OF 1988 (S.929)

Submitted to the
SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE
COMMITTEE ON THE JUDICIARY
U.S. SENATE

May 19, 1988

The American Hospital Association appreciates the opportunity to offer its views in support of S.929, the Volunteer Protection Act of 1988.

The purpose of this legislation is to encourage reasonable reform of state laws to provide limited immunity from civil liability, under certain circumstances, to volunteers working on behalf of not-for-profit organizations and governmental entities for actions taken in good faith on behalf of such organizations.

Few things exemplify the American tradition of compassion and helping others more than the volunteer efforts in our nation's hospitals, communities, religious organizations, and in the myriad of other charitable activities. Libraries, universities, and other educational institutions have been beneficiaries of countless hours of volunteer labor by concerned individuals. The list of organizations that depend on volunteer services is almost endless.

Unfortunately, we live in a litigious society. Our courts are filled with individuals seeking redress of real and imagined injuries. This phenomenon has caused liability insurance costs, especially insurance for officers and directors, to rise to astronomical levels. In some instances, this insurance is not available at any cost. This situation affects volunteers and is having a chilling effect on the recruitment and retention of volunteer leaders. Clearly, this cannot be permitted to continue.

In these days of cost consciousness in health care as well as other societal areas, it is essential that volunteerism be encouraged and nurtured, not thwarted. The volunteer not only performs needed and welcomed services, but also serves as a role model of civic responsibility for those who are to follow as volunteers. The volunteer plays a pivotal role in the function of hospitals and other health care facilities. Throughout the nation, more than 4,600 hospital auxiliaries operate as exclusively charitable organizations. Their contributions and those of other volunteers groups must be recognized and understood. For those reasons, in May, 1987, the American Hospital Association's Board of Trustees, took formal action to support the Volunteer Protection Act of 1988.

The reform of state legislation to provide civil liability immunity to volunteers who are acting in good faith within the scope of their official functions and duties within an organization is a giant step forward in preserving and encouraging volunteerism. It will offer volunteers clear guidance and assurances regarding personal susceptibility to tort liability actions. It will enable not-for-profit hospitals and other organizations to continue and expand their use of volunteers and assist them to reach out to people in need without further burdening public funds.

Though we do not generally favor the device of withholding federal funds as a means of encouraging states to take certain actions in amending their laws, we believe that it is an appropriate incentive in this instance. We encourage all states to enact appropriate legislation at the earliest possible date.

AHA would like to congratulate the sponsors of this legislation for their recognition of the need to protect and encourage volunteerism. We urge Congress to take favorable action on this legislation and encourage the states to implement needed state legislative reforms at the earliest opportunity.

AMERICAN ASSOCIATION OF BLOOD BANKS
National Office Suite 600, 1117 North 19th Street, Arlington, Virginia 22209 (703) 528-8200

STATEMENT

OF THE

AMERICAN ASSOCIATION OF BLOOD BANKS

ON

S. 929, THE VOLUNTEER PROTECTION ACT OF 1987

BEFORE THE

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

FRIDAY, MAY 20, 1988

STATEMENT OF THE AMERICAN ASSOCIATION OF BLOOD BANKS ON S. 929, THE VOLUNTEER PROTECTION ACT OF 1987, BEFORE THE SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE, COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, FRIDAY, MAY 20, 1988

Mr. Chairman and Members of the Subcommittee,

The American Association of Blood Banks (AABB) is pleased to submit this written testimony for inclusion in the hearing record on S. 929, the Volunteer Protection Act of 1987, introduced by Senator Melcher. The Association thanks the Chairman, Senator Heflin, and the Subcommittee for holding hearings on this important legislation. The AABB supports S. 929 and its companion bill in the House, H.R. 911, introduced by Congressman Porter. We urge the Subcommittee to report the bill favorably at the earliest possible time.

The American Association of Blood Banks (AABB) is a private, nonprofit, voluntary health organization. It is the professional medical society for those institutions and individuals engaged in blood banking and transfusion medicine in the United States. The AABB is the world's largest organization and the only group in the U.S. devoted exclusively to these scientific disciplines.

AABB member facilities collect nearly half of the nation's blood supply and transfuse over 80 percent of all the blood collected in the United States. AABB members are located in all 50 states and over 40 foreign countries. More than 2,400 institutions -- including community blood centers, hospital blood banks and hospital transfusion services -- are AABB members. In addition, nearly 8,000 physicians, scientists, administrators and technologists hold individual memberships in the AABB.

Throughout its 41-year history, the American Association of Blood Banks has worked to maintain an adequate blood supply and make it as safe as possible for the American people. The AABB sets standards for and accredits blood banks and transfusion services. AABB's publication, Standards for Blood Banks and Transfusion Services, now in its 12th edition, is the nationally recognized standard utilized by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Department of Defense Military Blood Program as well as several state licensing agencies. In addition, AABB's Technical Manual, first published in 1953 and currently in its 9th edition, is the primary resource text used worldwide for collecting, testing and transfusing blood. Further information describing the AABB and its programs is contained in the Fact Sheet attached to this statement.

The AABB is incorporated as a not-for-profit organization in the State of Illinois and organized under Section 501(c)(3) of the Internal Revenue Code. In addition, almost all the AABB's institutional members are nonprofit entities. As such, these blood centers and hospitals rely heavily on volunteers to work in their facilities and serve on their boards of directors and committees.

Like businesses and other organizations throughout the United States, the AABB and its member institutions have not been immune from what has been labeled the "insurance crisis." In particular, this Association and many of its institutional members have had difficulties obtaining adequate and affordable liability insurance to cover their directors and officers.

In fact, from 1985 to 1986, the premium for the AABB's directors' and officers' (D&O) liability insurance increased more than 50 percent. In addition, the Association went "bare" for D&O liability coverage from March of 1986 to August of 1987. This resulted from decreased coverage and increased costs, deductibles and exclusions. Today, the AABB again carries D&O liability insurance with higher deductibles and more limited coverage. Moreover, the premiums have increased more than 500 percent in the last three years despite the fact that no claim has ever been filed against the Association.

The seriousness of the increasing difficulties directors and officers have obtaining adequate and affordable liability insurance was underscored in a 1987 survey conducted by Peat, Marwick, Mitchell and Company, the major New York accounting firm. That survey was undertaken to assess the overall perception of the directors' and officers' liability problem as well as to determine how various profit and not-for-profit organizations were dealing with the problem. The survey found that 90 percent of the more than 2,500 respondents indicated that directors and officers (D&O) liability insurance was having a negative effect on the quality of governance in American organizations.

More than 70 percent of the not-for-profit organizations responding to the survey reported that they carry D&O liability insurance for members of their board of directors. However, most participants reported increases in insurance premiums and expect further premium increases over the next five years. Equally as startling was the finding that approximately one-third of the sample group reported that premiums had risen more than 300 percent at the last renewal of their organization's D&O liability coverage, and another 46 percent indicated that rates had risen up to 300 percent. Interestingly, only 6 percent reported that rates were unchanged.

In addition to rate increases, 16 percent of the entire sample said that policy deductibles went up 300 percent or more, and about 25 percent had experienced increases up to 300 percent. Only one-third of the respondents reported that deductibles did not change. However, slightly more than one-third said that coverage levels at the last renewal had remained the same, 37 percent said that coverage had been reduced and only seven percent said that coverage had broadened.

Finally, about half of the respondents reported that the D&O liability problem was having some effect on the way they managed their organization. Another ten percent said there was a considerable effect, and two percent reported a great deal of effect.

The Peat-Marwick findings were validated in a two-part survey commissioned by the Foundation of the American Society of Association Executives (ASAE) last fall. Some 64 percent of the 265 association executives and 359 volunteer board members polled said their organizations carried directors' and officers' insurance, but 13 percent noted that their insurance does not cover ethics or standards committees, peer review or employees discrimination. Most of the exclusions have been imposed since 1985. In addition, the average premium increase reported since 1984 was 155 percent with a median increase of 54 percent. Some 26 percent with D&O coverage reported premium increases doubling in the past four years, while more than 10 percent had hikes in excess of 300 percent.

The ASAE survey of association executives also found that 14 percent of the organizations surveyed have eliminated programs because of a fear of litigation, but only five percent have been sued within the past five years. A majority of the associations indemnify their directors in their bylaws, and eight percent reported resignations of board members.

With specific reference to volunteers, the ASAE survey found that 16 percent of volunteer board members said they have withheld their services to an organization because of concern about liability, but only two percent reported being sued as a volunteer for a nonprofit organization. Almost half of the respondents said they see fewer people willing to serve on nonprofit boards, and 72 percent noted that volunteers are more cautious in what they do or say as board members. These are shocking findings, and they point up a serious problem. Nonprofit organizations are being squeezed from both sides as they experience a decline in volunteers and major increases in their insurance premiums.

S. 929 is a modest, but a fair and sensible measure to help alleviate the D&O liability insurance crisis. The bill simply establishes a mechanism to encourage states to reform their laws to provide immunity from civil liability to volunteers serving with nonprofit organizations and governmental entities who are acting in good faith and within the scope of their duties as a volunteer. Many of the states have already enacted some form of legislation designed to limit or eliminate the liability of directors of corporations chartered in those states. Several other states have similar legislation under consideration.

S. 929 would not shield a volunteer for damage or injury caused by willful and wanton misconduct, and it does not affect the liability of the organization for any injuries caused by volunteers. In addition, the bill does not affect any civil action brought by a nonprofit organization against any volunteer.

Over the years, nonprofit organizations and the volunteers who work with them have performed vital functions in our society. These individuals deserve to be protected from civil liability while serving as a volunteer if they are acting in good faith.

For this and the above-stated reasons, the American Association of Blood Banks supports S. 929, the Volunteer Protection Act of 1987. S. 929 strikes a good balance between the need to protect volunteers and the rights of an injured party.

The AABB thanks the Chairman for the opportunity to submit this statement, and we again urge the Subcommittee to favorably report this bill at the earliest possible time.

AMERICAN CANCER SOCIETY

STATEMENT

OF

KATHLEEN J. HORSCH

CHAIRMAN, BOARD OF DIRECTORS

AMERICAN CANCER SOCIETY, INC.

IN SUPPORT OF

S. 929, VOLUNTEER PROTECTION ACT

MAY 20, 1988

For More Information
Contact John H. Madigan, Jr.
at 202-546-4011

The American Cancer Society is the world's largest nonprofit health agency. On behalf of the 2 1/2 million volunteers who work in every community across America, I urge support of S. 929, the Volunteer Protection Act. Our volunteers come from every walk of life, representing all segments of our great society. Volunteers are the backbone of our organization, people without whom we could not do battle against the dreaded disease cancer.

This year the American Cancer Society in observes its 75th anniversary with the theme "Commemorating 75 Years of Life". The ACS traces its origins to 1913, when a group of ten physicians and five laymen met in New York City and founded the American Society for the Control of Cancer. Its stated purpose at the time was to "disseminate knowledge concerning the symptoms, treatment, and prevention of cancer; to investigate conditions under which cancer is found; and to compile statistics in regard thereto." Later renamed the American Cancer Society, it is today one of the largest voluntary health agencies in the United States and one of the oldest. The ACS is comprised of 2.5 million Americans united to conquer cancer through balanced programs of research, education, patient service and rehabilitation.

The American Cancer Society, Inc. is composed of a National Society, with 57 chartered Divisions and 3,232 Units. A 206-member House of Delegates provides a basic representation from the

57 Divisons and additional representation on the basis of population. It elects and is governed by a Board of Directors of 124 voting members, approximately half of whom are members of the medical or scientific professions. The National Society is responsible for overall planning and coordination, provides technical help and materials to Divisions and Units, administers programs of research, medical grants and clinical fellowships, and carries out public and professional education on the national level. The 57 Divisions are governed by members of Divisional Boards of Directors, both medical and lay, in all the states plus six metropolitan areas, the District of Columbia, and Puerto Rico. The Units are organized to cover all counties in the United States. Thousands of community leaders direct and conduct the Society's programs at this level.

The Society maintains its priorities and goals through activities developed by the departments of Research, Professional Education, Public Education, Public Information, Epidemiology and Statistics, Service and Rehabilitation, Public Affairs, and Crusade.

The ACS Volunteer is our national treasure. He or she is a doctor conducting seminars on early detection methods; a retiree driving patients to treatment facilities; or a worker spending free time canvassing door-to-door and disseminating life-saving information. Whatever the activity and whatever the reason, the work of volunteers best exemplifies the true meaning and strength of the American Cancer Society.

The reasons for becoming a Society volunteer - a phone call from a friend, or perhaps a family member touched by cancer - are as varied as the more than 2.5 million individuals who unselfishly give of their time, energy and personal resources. However, the willingness of volunteers to offer their services has been increasingly deterred by a perception that they put themselves and their personal assets at risk in the event of liability actions against the organizations they serve.

The American Cancer Society urges enactment of S. 929 to grant immunity from personal civil liability to a volunteer of a non-profit organization if such an individual was acting in good faith and within the scope of their official functions and duties, and if such damage or injury was not caused by willful and wanton misconduct.

American Diabetes Association., Inc.

National Service Center 1660 Duke Street Alexandria, Virginia 22314 (703) 549-1500 Telex: 901132

STATEMENT
OF THE
AMERICAN DIABETES ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ON THE
VOLUNTEER PROTECTION ACT

May 20, 1988

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The American Diabetes Association (ADA), which represents the interests of over 11 million Americans with diabetes, is pleased to submit this statement to the Courts and Administrative Practice Subcommittee on S. 929, the Volunteer Protection Act.

Diabetes is a disease in which the body does not produce or properly respond to insulin, a hormone produced by cells in the pancreas that is required to regulate blood glucose (sugar) levels. Diabetes is one of the leading causes of death in the United States, and it is a leading cause of blindness and vision impairment, heart disease, kidney failure, and nerve disease. Diabetes is the number one cause of all non-traumatic foot and leg amputations.

The economic cost of diabetes is also staggering. Studies currently under review by the American Diabetes Association suggest the annual cost of diabetes to our society are approximately $23 billion.

To help address the human and economic costs of diabetes to our country, the ADA has articulated a two-fold mission: 1) to find a preventive and cure for diabetes; and 2) to improve the well-bring of people with diabetes and their families. The critical component in pursuit of that mission is the active and dedicated work performed by ADA's volunteers.

The ADA is comprised of 55 affiliate associations, 800 chapters, and over 220,000 members. At the national, affiliate, and chapter levels, over 10,000 volunteers serve on committees that establish policies relating to fund- raising, youth services, professional and patent education, government relations, and other priority areas. In addition to serving on national, affiliate, and chapter committees, these volunteers devote a significant amount of their personal and professional time to patient care, patient education, public awareness activities, and the furtherance of the ADA mission.

However, the increasing threat of exposure to civil liability poses a significant threat, we believe, to our ability to recruit and maintain a dedicated cadre of able volunteers. While a number of states have enacted laws that protect volunteers from liability exposure in varying degrees, these state-passed laws have no consistent or uniform standards. Some state laws cover boards of directors only, some cover board and staff only, and some cover board and committee membership only. We believe that in order to be consistent and to provide protection for the entire range of volunteer leadership and association management, Congressional legislation must be enacted that protects boards of directors, committees and other volunteer leadership from exposure to civil liability.

For this reason the American Diabetes Association enthusiastically supports S. 929, "The Volunteer Protection Act." We applaud the efforts of Senator John Melcher in recognizing and championing the cause of the unique role volunteers play in the nonprofit community and in our society.

S. 929 would encourage states to pass laws that exempt volunteers from exposure to individual civil liability unless their actions demonstrate "willful and wanton" misconduct, or are outside the scope of their duties and responsibilities as volunteers. This is an issue of central concern to our Association and we wholeheartedly support this provision of S.929. The bill does not prohibit lawsuits filed against an organization.

As an inducement for states to enact volunteer protection legislation, S. 929 directs the Secretary of Health and Human Services to withhold one percent of a state's Social Services Block Grant from any state that fails to adopt such legislation by the end of the next full session of its legislature after enactment of the law by Congress. Funds withheld would be redistributed to states that did enact legislation to protect volunteers.

Some concern has been expressed by a variety of organizations that with-holding one percent of Block Grant monies penalizes the constituencies nonprofits and state social services agencies are designed to serve. In response to these concerns, some of the supporters of S.929 have stated that 1) enactment of volunteer protection legislation would cost states little or no money; 2) the legislation should enjoy bipartisan support and encounter little opposition; and 3) even if the one percent penalty is assessed, the loss can be made up by shifting dollars from other accounts within the state budget.

While the ADA recognizes the importance of providing incentives to states to enact volunteer protection legislation, we also believe that there may be more appropriate mechanisms -- such as increasing a state's Block Grant funds by one percent if volunteer protection legislation is enacted -- that provide a "carrot" rather than a "stick" incentive for enactment.

We strongly encourage the Courts and Administrative Practice Subcommittee to give its speedy approval to S. 929. We once again wish to thank Senator Melcher for the leadership he has exercised on this issue and to this Subcommittee for providing a public forum on this important legislation.

Statement of the

American Heart Association

on

Volunteer Protection Act

before the

Subcommittee on Courts and Administrative Practices
U.S. Senate

The Honorable Howell Heflin, Chairman

May 20, 1988

The American Heart Association welcomes this opportunity to submit this statement for the record on the Volunteer Protection Act (S.929).

Founded in 1924 by six New York City cardiologists, the American Heart Association now has active organizations in all 50 states and Puerto Rico. With components in more than 1,500 communities, the American Heart Association is now one of the world's largest health organizations. Over two million volunteers join the American Heart Association every year in the fight against heart and blood vessel diseases, the nation's number one killer.

Funded by private contributions, the American Heart Association's stated goal is to reduce premature death and disability from cardiovasuclar diseases and stroke.

To achieve this goal, the American Heart Association is involved in a multi-faceted effort. Of prime concern is the financial support of research into the causes and treatment of life-threatening diseases. Since 1949, when it first sought public contributions and enrolled non-medical volunteers, the American Heart Association has invested approximately $691 million for cardiovascular disease research.

Public and professional education and community services make up another sizeable investment of time and money. In addition to informing health professionals about the latest medical advances, the American Heart Association educates millions of people concerning lifestyle changes to help prevent or reduce the impact of heart disease and related illnesses.

To accomplish these goals, including raising the necessary funding, requires the efforts of approximately 2.4 million volunteers of whom about 67,000 are active year-round. In whatever role or wherever they may be, these dedicated citizens are getting the job done.

In the 1988 Gallup Study on Voluntarism and the Liability Crisis, based on a broad sample of non-profit organizations and their volunteers, it was discovered that:

> Approximately one in ten non-profit organizations (8%) report that volunteers have resigned over liability concerns.
>
> One in six (16%) volunteers report witholding their services due to fear of liability.
>
> Almost one-half (49%) of all volunteers surveyed report seeing fewer volunteers willing to serve in leadership positions.

Being a voluntary organization, these findings concern us.

The volunteers who act on behalf of the American Heart Association in conducting public health education programs, monitoring research grants, providing business expertise, and/or raising funds, may during the course of their duties, make decisions or take actions which, in some cases, may expose them to civil liability, even though their actions may be undertaken in good faith and do not reflect willful or wanton misconduct. This legislation protects these individuals and also encourages other citizens to volunteer for organizations like AHA.

This legislation would promote the interest of social service program beneficiaries and taxpayers and sustain the availability of vital programs like those provided by the American Heart Association by encouraging state law reform to provide immunity from civil liability to volunteers serving in good faith.

The American Heart Association supports the Volunteer Protection Act (S. 929) as a means of protecting the good faith efforts of our volunteers and we urge the Subcommittee on Courts and Administrative Practices to enact this legislation.

The American Society of
Mechanical Engineers

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Statement of
The American Society of Mechanical Engineers
on
The Volunteer Protection Act, S. 929

Submitted to the
Subcommittee on Courts and Administrative Practice
Committee on the Judiciary
United States Senate
May 20, 1988

The American Society of Mechanical Engineers is a nonprofit educational and technical society with 118,000 individual members including 22,000 students. More than 17,000 members are actively involved in volunteer work on behalf of the Society. One of ASME's primary areas of public service is the development and administration of nearly 600 different codes and standards, many of which are law in forty-seven states and at least one of which is a defacto world standard. ASME safety standards are developed by some 4700 volunteers who serve on more than 120 committees. These volunteers donate an estimated $100 million worth of free services to the nation each year.

Recognizing that volunteers are the lifeblood of ASME, the Society strongly endorses H.R. 911/S. 929 which would encourage states to pass laws exempting volunteers acting within the scope of their duties from personal civil liability.

Because of the proliferation of civil lawsuits in the U.S. and the threat of personal liability, ASME has witnessed some of its members becoming increasingly hesitant to perform volunteer work. Although volunteers rarely have been sued successfully, the resources expended in cost and time to defend oneself against a suit provide a strong disincentive for citizens to volunteer. Hence, individuals are withholding their services rather than placing their lifelong assets in jeopardy. A 1987 Gallup survey of volunteer board members of nonprofit organizations found that:

- One in five volunteers are more concerned about serving in volunteer organizations due to the liability threat;

- 16 percent of those surveyed had withheld their services due to fear of liability;

- 49 percent reported seeing fewer people willing to serve on boards of directors for nonprofit organizations;

- 72 percent reported volunteers becoming more cautious in what they say or do relating to their volunteer work; and

- Two percent had been sued as a volunteer for a nonprofit organization.

In addition to the negative impact the liability situation is having on America's charitable spirit, there is a compelling economic reason to deal with this problem. A 1985 Gallup survey estimated that America's 89 million volunteers provide more than $100 billion worth of free services to our economy each year. A decline in volunteer manpower would adversely affect the nation's ability to feed and clothe our poor, distribute medical supplies, operate our libraries and perform other essential public services.

Currently, the majority of states have laws giving limited protection. Some states protect volunteers for sports teams, while others cover only directors and officers of nonprofit groups. We believe the Congress should aid the development of more comprehensive protection for all volunteers. H.R. 911 and S. 929 provide a step in the right direction by providing an incentive for states to exempt all volunteers for nonprofit organizations from the threat of civil liability.

ATRA American Tort Reform Association
1250 Connecticut Avenue, N.W. • 7th Floor • Washington, D.C. 20036 • (202) 637-6490

Testimony of Blair Childs
Executive Director, American Tort Refom Association

Hearing on S. 929, The Volunteer Protection Act

Senate Judiciary Committee Subcommitte on
Courts and Administrative Practice

May 20, 1988

Mr Chairman, members of the distinguished Subcommittee, my name is Blair Childs. I am Executive Director of the American Tort Reform Association (ATRA).

ATRA is a broadbased coalition of over 400 organizations including trade associations, large and small businesses, professional groups, non-profit organizations, educational groups, local government entities and individuals supporting changes in the civil justice system. Concerned about proliferating liability suits and escalating damage awards, ATRA is the first coalition of its kind dedicated solely to achieving passage of tort reform legislation at the state and federal levels. ATRA has helped establish and works closely with a network of coalitions in every state in the country.

One of the many tort reforms we support is legislation which would grant limited immunity from civil liability to individual volunteers and directors and officers of non-profit organizations. This reform is part of a broader movement to restore fairness, balance and predictability to the civil justice system. Americans have realized that our legal system is having a far reaching and unanticipated impact on our society. Increasing numbers of lawsuits, increasing size of the awards, and decreased predictability in the system have limited the choice of American consumers, chilled innovation, reduced our competitiveness, eliminated certain goods and services, and even discouraged people from volunteering. We support S. 929, the Volunteer Protection Act, because we believe this bill will help give the states the incentives necessary to bring about this important reform.

There is no doubt that volunteers are one of this country's most valuable resources -- they are the classic group of unsung Americans giving of themselves to help others. In fact, many would argue that the greatest strength of our country has been the ability of our citizens to cooperate voluntarily in meeting the needs of citizens young and old that cannot be addressed effectively by government or the private sector.

However, this spirit of volunteerism that has built our nation has been threatened in recent years by the liability crisis. Volunteers in organizations such as the Red Cross, the Boy Scouts, the YMCA, the Little League, as well as health care organizations and volunteer fire departments, are now facing the reality that to volunteer in today's society means running the risk of being sued. It means facing the possibility of losing their home and all their other assets.

For example in a New Jersey Little League game, a child that normally played second base was placed in the outfield. When he was hit in the eye by a baseball, four of the volunteer coaches were sued by the parents for $750,000. The argument was their son was a natural infielder and should not have been placed in the outfield.

The fear of having to defend oneself in court has forced many to reevaluate their decision to volunteer. That very situation arose for a Boy Scout leader in Maryland who was in charge of a camping trip where a young boy drowned. Two years and thousands of dollars later, the leader won his case but vowed never to volunteer again.

According to a study released by Peat, Marwick and Mitchell, non-profit organizations across the country are being seriously affected by the liability crisis. About 80 percent of those surveyed said they saw a definite problem; 13 percent of those responding found people who would not serve on a board that does not offer director and officer (D & O) liability coverage; and 28 percent believe there is a crisis for volunteer associations in our country.

A real life example of how the problem is affecting organizations that depend on volunteers is the Recreation Department in Fairfax County, Virginia. Because their existing insurance does not cover volunteers, from 1983 - 1986 the number of volunteer participants in that county has dropped by almost half -- from 4,740 to just 2,430. The county has hired more people to replace some of the volunteers, but in some cases the quality of the programs and services has been reduced.

President Reagan articulated the problem in a letter to the American Tort Reform Association saying, "...But these priceless contributions are being undercut -- not by lack of willingness on the part of volunteers, but by the fear that their efforts will result in their being sued for no reason of fault."

Mr. Chairman, S 929 offers the carrot approach necessary to help encourage states to act now to provide immunity to volunteers of non-profit organizations. We urge you to report S. 929 and provide America's volunteers the support they deserve.

Associated Locksmiths of America, Inc.
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STATEMENT OF
MARY HAMMOND, EXECUTIVE DIRECTOR
ASSOCIATED LOCKSMITHS OF AMERICA
BEFORE THE
SENATE JUDICIARY'S SUBCOMMITTEE ON
COURTS AND ADMINISTRATIVE PRACTICE
MAY 20, 1988

Mr. Chairman and Members of the Subcommittee, I am Mary Hammond, Executive Director of Associated Locksmiths of America. I am submitting this statement to you today representing locksmiths across the country who are members of our association regarding the Volunteer Protection Act, S. 929.

ALOA represents over 8,000 members in the United States and Canada in locksmithing and related areas of the physical security industry. The industry is made up of 11,000 locksmith shops and employees, and over 38,343 locksmith workers in companies across the Nation.

Across the nation, volunteers including those who are active in ALOA, are becoming afraid to offer their services, fearing that they risk their personal assets in the event of a lawsuit against the organization they serve. Not-for-profit public and private groups; town councils, PTA, credit unions, Scout troops, youth athletic groups, art programs, food banks, and associations are now facing the prospect of losing irreplaceable contributions of time, skills, and dedication of volunteers on governing boards and indirect service activities.

It is becoming harder for ALOA to find volunteers because they are increasingly wary of being exposed to being sued by someone who is injured, lost their job, or somehow damaged. When ALOA does find volunteers, we find ourselves forced to pay high insurance premiums, even if we have never been sued. To make matters worse, it is estimated that between 1986 and 1988, insurance costs have risen nearly four times for a liability policy to protect an organization such as ALOA from a lawsuit.

Our association supports Senator John Melcher (D-MT), who has introduced S. 929, the "Volunteer Protection Act." The purpose of this act is to encourage states to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of not-for-profit organizations and governmental entities. The act simply protects individual volunteers who are acting in good faith and within the scope of their duties as a volunteer.

The Volunteer Protection Act would not reduce the rights of those who have been harmed to obtain redress through civil suits. Individuals who have abused their positions of trust with volunteer organizations would still face criminal penalties and civil suits for willful and wanton misconduct. And, the organization could still be sued.

The legislation would withold 1 percent of federal social services block grants from any state failing to extend liability protection to volunteers by the beginning of fiscal 1989. These grants include money for general social service programs, daycare programs, and state and local services training. This will prod the states to pass their own laws for Volunteer Protection.

The law's enforcement strategy - withholding federal funds from states failing to comply - has been used before, most notably in legislation denying highway dollars to states not raising their minimum legal drinking age to 21. Mr. Porter, who cosponsored the drinking-age bill, says he is taking the same approach in his Volunteer Protection Bill because "federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation."

The American Society of Association Executives (ASAE) has established the Coalition for Volunteer Immunity to promote solutions to volunteer liability problems at the state and federal levels. The Coalition is working to reduce the threat of lawsuits against volunteers and to increase the availability and affordability of liability insurance for volunteer-dependent organizations. The Coalition's immediate objective is to promote federal legislative action on the Volunteer Protection issue. ALOA is working closely with the Coalition on this legislation.

The chilling effect of liability concerns is ruining the ability for ALOA across the country to appoint boards of organizations and recruit volunteer who run so many critical programs. Board of directors and committee members who serve on a voluntary basis, which is time-consuming and costly, are the lifeblood of ALOA. Their leadership is needed to make so many crucial programs work. Volunteer service is valuable and deserves to be encouraged not deterred. High insurance costs and increased threats of lawsuits are clearly the cause of decreasing volunteerism.

The Volunteer Protection Act is the solution to this serious problem. This model legislation is based on the best of the state laws recently enacted to address this problem. The bill is supported by the broadest array of organizations, representing millions of volunteers across the county. The existence of vital programs is at stake, and this spirit of volunteerism itself is in danger. The Volunteer Protection Act would alleviate the concern over the uncertain fate of volunteerism in ALOA, as well as in America. Volunteers are people who donate their time and talents without compensation to serve our communities. With the passage of the Volunteer Protection Act these people would not have to fear losing their homes and assets if they want to make their communities a better place to live.

BIG BROTHERS
BIG SISTERS OF AMERICA

May 20, 1988

Testimony Submitted on Behalf of

BIG BROTHERS/BIG SISTERS OF AMERICA

by

Joyce M. Black, President
Thomas M. McKenna, National Executive Director

THE VOLUNTEER PROTECTION ACT (S. 929)

Big Brothers/Big Sisters of America is grateful to have been asked by Senator John Melcher to submit testimony regarding current proposed legislation that is critical to our important service: the Volunteer Protection Act.

Our organization was formed in 1977 with the merger of Big Brothers of America and Big Sisters International. However, the Big Brothers/Big Sisters movement traces its roots to the first recognized One-to-One matches in 1902. In working to help meet the needs of at-risk children and their families, Big Brothers/Big Sisters has become the fastest growing youth-serving federation in the United States.

Volunteers are a central component of the Big Brothers/Big Sisters service. Approximately fifty thousand children in America currently benefit from the time and friendship that is provided them by their volunteer Big Brothers and Big Sisters. But because of a shortage of volunteers, another fifty thousand children remaining on the waiting lists of the 470 Big Brothers/Big Sisters programs across the country. Over the last few years, this shortage has been severely aggravated by two interrelated problems: the threat of litigation against volunteers, and the unavailability of affordable liability insurance.

There is a strong public perception, if not a reality, that we live in a very litigious climate in America today. As a result, men and women who would otherwise be inclined to serve as Big Brothers and Big Sisters are increasingly reluctant to engage in activities that could potentially expose them to liability. While these altruistic individuals may appreciate the value to a child of having a caring adult with whom to share experiences and concerns, the potential risk of being sued often extinguishes any interest in volunteerism. The Volunteer Protection Act would encourage states to adopt legislation that would provide volunteers with immunity from civil liability except where their "willful or wanton misconduct" has caused damage or injury. The protection afforded by this proposed legislation would undoubtedly relieve much of this concern about potential liability and, in turn, would increase volunteerism.

In 1988, insurance costs to Big Brothers/Big Sisters agencies around the country will be three times the amount spent for the same coverage during the preceding year. And because of insurance companies' intensified fears of litigation and the attendant claims against policies, additional burdens are being imposed on insureds as conditions of coverage. For example, Big Brothers/Big Sisters agencies will be required to administer a one hour psychological test to volunteer applicants as a screening device, despite many questions as to the validity of such tests for identifying personality characteristics of the tested individuals. The insurance company readily admits that the primary purpose of this condition for insurance is to enhance its defense in the event of a lawsuit arising out of the actions of a volunteer. the insurer of Big Brothers/Big Sisters agencies is now also requiring verification that volunteers carry automobile liability insurance coverage of no less than $100,000 per event/$300,000 per policy period for bodily injury and $25,000 for property damage. The sole purpose for this requirement is to enable the insurer to spread the risk of exposure to the volunteer's insurance company. While these burdensome prerequisites to insurance coverage may enhance the position of the insurer, they do nothing to improve the quality of the Big Brothers/Big Sisters service. But more importantly, they decrease volunteerism by interposing unnecessary and discouraging obstacles to service by potential interested Big Brothers and Big Sisters for children in need of a concerned and caring adult.

The limited volunteer immunity that would be afforded by the Volunteer Protection Act would diminish the risk that volunteer conduct will give rise to liabilities relating to the performance of the Big Brothers/Big Sisters service. Reductions in risk mean lower payouts on claims which in turn will enable insurance companies to keep down charges for premiums and to withdraw the conditions for coverage that inhibit volunteerism. Lower insurance costs will also enable Big Brothers/Big Sisters agencies to devote greater resources to the provision of their services to children.

Two additional features of the Volunteer Protection Act warrant special mention. First, it should be noted that while the proposed bill encourages states to adopt legislation providing limited immunity to volunteers, the organizations utilizing volunteers would remain liable for all their acts and omissions in accordance with the laws of their respective jurisdictions. Second, the bill would not ask states to excuse willful or wanton misconduct on the part of volunteers. Thus, the Volunteer Protection Act provides a fair balance between the legitimate interests of those who might be injured in connection with volunteer activities and the need to encourage volunteerism.

During 1988 Big Brothers/Big Sisters Appreciation Week, February 21-27, Congress honored the many volunteers who over the years have helped hundreds of thousands of children through the most challenging and crucial times of their lives. These Big Brothers and Big Sisters are shining examples of the American spirit of volunteerism. The adoption of the Volunteer Protection will reinforce that spirit by eliminating obstacles to volunteer service. Big Brothers/Big Sisters of America encourages your full support for the Volunteer Protection Act.

TESTIMONY SUBMITTED BY PHYLLIS V. ROBERTS, INTERNATIONAL PRESIDENT
GENERAL FEDERATION OF WOMEN'S CLUBS
ON
THE VOLUNTEER PROTECTION ACT - S. 929

May 20, 1988

On behalf of the General Federation of Women's Clubs, I would like to express appreciation to Chairman Heflin and the members of the Senate Subcommittee on Courts and Administrative Practice for holding this hearing and for affording me the opportunity to submit testimony in support of S. 929, the Volunteer Protection Act.

As International President of the General Federation of Women's Clubs (GFWC), I speak today for 400,000 GFWC members across the country who are seriously concerned that they and other volunteers in their communities are placing their family assets at risk whenever they agree to serve as volunteers.

In today's hectic world the need for volunteers continues to grow, while the time people have to volunteer seems to be declining. People must juggle the competing responsibilities of work, home, family and other commitments. In this atmosphere, the threat of personal liability arising from volunteer service serves only to discourage the recruitment of volunteers willing to take responsibility for significant community projects.

For instance, a GFWC clubwoman in New York agreed several years ago to serve as chairman for a community summer festival which had become a tradition in the town. That year, the festival included a hot air balloon launch. Unfortunately, an individual who was assisting with the launch stepped in a hole in the field where the balloon launch was taking place, breaking her leg. As a result the injured individual filed suit, naming the town, the village and the GFWC member serving as chairman as defendents. Ultimately, the suit against all parties was dropped when the individual, who is a balloon enthusiast, feared that she would no longer be invited to participate in such hot air balloon launches.

Although in the end our volunteer suffered no financial loss, the town lost the enjoyment of the festival for several years, as no one during that period was willing to assume the risk of liability for organizing the event.

This case demonstrates both the reality of volunteer liability and the effects the perception of the liability threat has on the recruitment of volunteers. Simply put, there are very few people who are willing to make sacrifices, knowing that they may have to endure the emotional and financial stress of being sued for accidents beyond their control, involving no willful negligence or misconduct on their part.

A further problem relating to volunteer liability is the escalating cost of liability insurance. Again, I have become aware from our own membership that activities which have been undertaken by clubs for many years are now becoming virtually impossible, due to the cost of liability insurance. For instance, one of our state federations had to abandon the idea of hosting a special concert for winners of their music student scholarship program because they could not afford the cost of one night's liability insurance in addition to the rental fee for the concert hall. Some clubs have had to discontinue what had been highly successful fund-raising events for charitable organizations, either because they were unable to find adequate liability insurance or because the cost had become prohibitive.

GFWC members have become active in trying to find solutions to the problem of volunteer liability. Over 5,000 GFWC members have reported writing to their Senators and Representatives in support of the Volunteer Protection Act.

They have also been active in seeking the needed changes in state laws ultimately required to solve the volunteer liability problem. In fact, I am proud to report that the New Hampshire state legislature earlier this month enacted volunteer protection legislation which will go into effect July 1, 1988, thanks to the efforts of GFWC members. This bill was sponsored by a GFWC member, Rep. Annette Cooke of the New Hampshire House of Representatives, who worked with members of the New Hampshire federation to educate legislators about the need for the legislation.

Unfortunately, GFWC cannot boast the presence of influential clubwomen serving in all fifty states' legislatures. Action is needed at the federal level to demonstrate the seriousness of the problem and to provide incentives to encourage state legislatures to enact uniform volunteer protection laws.

The General Federation of Women's Clubs will be celebrating 100 years of volunteer service in 1990. It is our hope that the legal system of this nation will facilitate the continuance of this tradition of community service, so that we may look forward to another 100 years of service.

The members of GFWC congratulate Senator John Melcher of Montana and Rep. John Porter of Illinois for bringing the volunteer liability issue to the attention of the nation. I hope that we may be able to see the passage of the Volunteer Protection Act during the 100th Congress.

Thank you, Mr. Chairman, for the opportunity to present this testimony.

STATEMENT

OF

MR. RICHARD BROWDY

CHAIRMAN

HOME BUILDERS INSTITUTE BOARD OF TRUSTEES

ON

THE VOLUNTEER PROTECTION ACT

HR-911

FOR THE

SENATE SUBCOMMITTEE ON COURTS AND
ADMINISTRATIVE PRACTICE

U.S. SENATE

CHAIRMAN

THE HONORABLE HOWELL HEFLIN

MAY 24, 1988

I AM PLEASED TO SUBMIT THIS STATEMENT TO YOU ON BEHALF OF THE HOME BUILDERS INSTITUTE, THE EDUCATIONAL ARM OF THE NATIONAL ASSOCIATION OF HOME BUILDERS.

I AM RICHARD BROWDY. I AM CURRENTLY THE CHAIRMAN OF THE BOARD OF TRUSTEES FOR THE HOME BUILDERS INSTITUTE (HBI). I SERVE HBI ON A VOLUNTEER BASIS. I, LIKE MANY OTHER BUILDERS IN OUR INDUSTRY, SERVE AS A VOLUNTEER IN SEVERAL OTHER ORGANIZATIONS INCLUDING THE JEWISH COMMUNITY ALLIANCE, INC. AND THE NORTHEAST FLORIDA BUILDERS ASSOCIATION CHARITABLE TRUST.

FOR THE CONSIDERATION OF THIS COMMITTEE, I WOULD LIKE TO POINT OUT SEVERAL REASONS HBI BELIEVES VOLUNTEERS IN AMERICA SHOULD RECEIVE THE TYPE OF LIMITED PROTECTION OFFERED BY THE VOLUNTEER PROTECTION ACT.

FIRST, COSTS OF DIRECTOR AND OFFICER LIABILITY INSURANCE ARE RISING DRAMATICALLY AND DRAINING FINANCIAL RESOURCES OF ORGANIZATIONS THAT RELY ON VOLUNTEERS. MANY ORGANIZATIONS HAVE BEEN PRICED OUT OF THE MARKET COMPLETELY AND ARE NOW FACED WITH EVERYDAY CONCERNS OVER LIABILITY SUITS. FOR INSTANCE, IT WAS RECENTLY REPORTED THE JUNIOR LEAGUE OF WASHINGTON SAW ITS PREMIUMS FOR LIABILITY INSURANCE JUMP FROM $400 IN 1985 TO OVER $4000 IN 1986. HBI, THE EDUCATIONAL ARM OF THE NATIONAL ASSOCIATION OF HOME BUILDERS (NAHB), WAS INCORPORATED AS A 501(C)(3) EDUCATIONAL ASSOCIATION ONLY A FEW YEARS AGO. ALTHOUGH NAHB HAD CONDUCTED EDUCATION AND TRAINING PROGRAMS FOR THE HOME BUILDING INDUSTRY FOR OVER 40 YEARS, HBI WAS STILL CONSIDERED A "NEW" ENTITY. CONSEQUENTLY, OBTAINING D & O INSURANCE PROVED DIFFICULT. FOR OVER SIX MONTHS, NO CARRIER WOULD INSURE US. WHEN INSURANCE WAS FINALLY PROVIDED, IT SKYROCKETED 21.7 PERCENT HIGHER THAN THE PREVIOUS YEAR. THESE ARE ONLY TWO EXAMPLES OF THE THOUSANDS OF ORGANIZATIONS AFFECTED BY RISING COSTS.

THE THREAT OF PERSONAL CIVIL LIABILITY SUITS UPON VOLUNTEERS JEOPARDIZES THE SPIRIT OF VOLUNTEERISM IN THE UNITED STATES. AS YOU ARE NO DOUBT AWARE, THIS COUNTRY BECAME WHAT IT IS TODAY LARGELY DUE TO VOLUNTEERS HELPING OTHERS AND PUTTING THEIR VALUABLE TIME TO USE IN THE PURSUIT OF COMMON GOALS. MANY OF YOU ON THE COMMITTEE MORE THAN LIKELY SERVE AS VOLUNTEERS IN SEVERAL ORGANIZATIONS. ALTHOUGH THE ACTUAL NUMBER OF SUITS UPON VOLUNTEERS IS RELATIVELY SMALL, IT IS THE THREAT OF POTENTIAL LAWSUITS THAT SHOULD BE MINIMIZED. IT IS ONLY HUMAN NATURE TO BE AFRAID OF A LAWSUIT AND THINK THAT YOU COULD BE THE ONE THAT IS SUED. THUS, RECENT STUDIES HAVE INDICATED VOLUNTEERS TODAY ARE OFTEN AFRAID TO SERVE AS OFFICERS OR DIRECTORS OF ORGANIZATIONS. SOME HAVE EVEN RESIGNED OVER THE FEAR OF BEING BROUGHT INTO A COURT OF LAW.

THE VOLUNTEER PROTECTION ACT ENCOURAGES PROTECTION IN EVERY STATE BUT STILL ALLOWS THE STATES TO DETERMINE TO WHAT EXTENT PROTECTION IS GRANTED. THERE IS A DEFINITE NEED FOR EVERY STATE TO GRANT PROTECTION TO VOLUNTEERS, ESPECIALLY FOR THOSE ORGANIZATIONS THAT WORK ON A NATION-WIDE LEVEL. IF ONLY PART OF THE STATES ENACT LAWS LIMITING VOLUNTEER LIABILITY, A PLAINTIFF MAY OFTEN HAVE THE CHOICE OF BRINGING SUIT IN A STATE HAVING PROPER JURISDICTION AND VENUE, BUT HAVING NO VOLUNTEER PROTECTION. THIS WOULD DEFEAT THE PURPOSE FOR GRANTING PROTECTION. IN ADDITION, THE STATES ARE NOT BEING ASKED TO ADOPT A FEDERAL LAW. THEY CAN STILL ADOPT THEIR OWN LEGISLATION UNDER THIS ACT.

MR. CHAIRMAN, OPPONENTS OF THIS BILL ARGUE THAT IT IS A LIMIT ON LITIGATION TO POTENTIAL PLAINTIFFS. ALTHOUGH THIS MAY SEEM TRUE AT FIRST GLANCE, IT IS NOT ENTIRELY ACCURATE. PLAINTIFFS WOULD STILL HAVE THE OPPORTUNITY TO LITIGATE IF THEY ARE WRONGED BY AN ORGANIZATION. HOWEVER, THE ORGANIZATION ITSELF

WOULD BE THE NAMED DEFENDANT AND NOT THE VOLUNTEER SERVING THE ORGANIZATION. THE VOLUNTEER PROTECTION ACT MERELY STRENGTHENS THE CORPORATE VEIL. FURTHERMORE, THE VOLUNTEER IS STILL HELD ACCOUNTABLE TO POTENTIAL PLAINTIFFS IF HIS/HER MISCONDUCT IS WILFUL OR WANTON, THE USUAL DEFINITION OF GROSS NEGLIGENCE. ACTS THAT ARE INTENTIONAL OR EXTREMELY UNREASONABLE WILL STILL BE INTOLERABLE UNDER THE VOLUNTEER PROTECTION ACT.

THE HOME BUILDERS INSTITUTE FEELS THAT PROTECTING OUR NATION'S VOLUNTEERS IS ESSENTIAL. WITH THIS COMMITTEE'S SUPPORT, VOLUNTEERS CAN RECEIVE THE PROTECTION THEY DESERVE. I SPEAK TO YOU AS A TRUSTEE, A MEMBER OF THE BUILDING INDUSTRY, AND AS A VOLUNTEER DESIRING PROTECTION FROM UNNECESSARY LIABILITY.

THANK YOU FOR YOUR CONSIDERATION OF THIS STATEMENT.

WRITTEN TESTIMONY OF JONATHAN T. HOWE IN SUPPORT OF S.929, THE VOLUNTEER PROTECTION ACT

My name is Jonathan T. Howe and I am the founding, senior partner of the law firm of Howe & Hutton, Ltd., that specializes in representing not-for-profit and related organizations. I am also immediate past president of the National School Boards Association and was a member of the Illinois Secretary of State's Special Task Force to Review and Revise the Illinois General Not-for-Profit Corporation Act. I am pleased to have this opportunity to present written testimony in support of S.929, the Volunteer Protection Act.

Through my firm's representation of more than 200 not-for-profit organizations, as well as my volunteer positions with numerous federal, state and local organizations, I believe I bring a unique perspective to the problems faced by organizations in recruiting and retaining volunteers as a result of the fear of lawsuits and escalating insurance costs.

I have personally been involved in at least a half dozen situations in the last two years where volunteers have refused to participate or threatened to leave the organization because adequate liability insurance was not available or not reasonably available. For example, one association was faced with losing its entire board until insurance was finally obtained.

Similarly, our clients have had volunteers prematurely leave their organizations as a result of personal fear of liability or such fear by their sponsoring employer. Likewise, associations we represent have seen their insurance premiums and deductibles skyrocket and scope of coverage drop.

In light of the number of actual lawsuits that have been brought or, more importantly, been successful against volunteers including officers and directors of not-for-profit organizations, it may be the problem is more one of perception than reality. Nevertheless, based on my experience and as independent surveys such as those done by Peat, Marwick & Mitchell and the American Society of Association Executives have shown, it is a real problem for the not-for-profit community.

It is also a problem that has already been addressed to varying degrees by legislation in more than half of the states. However, the categories of individuals provided immunity and the activities covered vary widely from state to state and within individual states. In Illinois, for example, while volunteer directors and officers of all 501(c) tax-exempt organizations are immune from liability for damages resulting from the exercise of judgment or discretion in connection with organization duties or responsibilities unless the act or omission involved willful or wanton conduct, other volunteers who are not officers or directors are exempt only if they are serving a 501(c)(3) tax-exempt organization. Nevertheless, the fact that so many state legislatures have been mobilized to address this problem is indicative the problem is real.

I support the approach taken by S.929 and its companion bill, HR 911, in seeking to encourage uniformity among all states and in seeking to ensure all volunteers - - not just officers and directors - - are covered. As I'm sure you know, it takes a lot more than volunteer board members to make most organizations run. According to Independent Sector, a Washington-based group for non-profit organizations, nearly half of the United States population over 18 years of age engages in volunteer work at some time. It is, thus, imperative that Little League managers, Scout leaders and PTA volunteers be protected along with the officers and directors of trade associations.

I would also be remiss if I did not point out that the clients I generally represent -- the organizations themselves-- would not be immune from liability for the acts of their agents under this legislation. Nor would volunteers be immune for unauthorized or willful or wanton misconduct.

Based upon my 22 years of experience in the not-for-profit community, volunteerism is the lifeblood of these organizations. The passage of this legislation would encourage those who donate their time and talents to continue to do so without having to fear potentially financially devastating personal liability.

I appreciate having had the opportunity to express my view in support of the Volunteer Protection Act.

Statement of John McCarthy
Executive Director
of the
International Racquet Sports Association

to the

Senate Judiciary Subcommittee on Courts
and Administrative Practice
Regarding the Volunteer Protection Act
(S. 929/H.R. 911)

May 20, 1988

Mr. Chairman, I am John McCarthy, Executive Director of the International Racquet Sports Association (IRSA). IRSA is the national trade association representing 1,400 fitness, recreation and racquet centers throughout the U.S. and Canada.

We commend your Subcommittee for holding this important hearing on the Volunteer Protection Act (S. 929/H.R. 911). It has been long awaited by the association and small business world.

The volunteer crisis, as evidenced by the 1987 Peat, Marwick, Main report and the recent Gallup report, is not illusory, or abating. It strikes at the heart of many organizations that historically have depended upon volunteers and is pervasive in our litigious society. At the least, it is a disincentive to volunteers; at its worst, it places severe economic strains on a basic facet of American life.

Fear of liability from civil actions arising out of acts of omission has resulted in more than just "second-thoughts" about offering one's services as a volunteer.

As you proceed with this much-needed legislation, IRSA hopes that you will consider three essential issues (drawn from our association concerns and those of the taxpaying small businesses we represent):

1. Any State law providing immunity from civil liability, encouraged by this legislation, should be comprehensive, i.e., include officers, directors, and committee chairpersons, members and volunteers at all levels.

2. The driving national thrust for such legislation should provide positive incentives, i.e., a modest increase in the funds available to each State responding from the Social Services Block Grant program, as well as negative incentives for non-participating States.

3. The States should be encouraged strongly to extend this immunity to small business directors and officers as well, lest a new, unfair competitive advantage be added to those already enjoyed by the tax-exempt world. Should this not occur, the liability crisis would increase also for small businesses since the shrinking risk pool would result either in denial of the availability of insurance premiums, or even more exorbitant premium rates. Fairness should be sustained in the service sector marketplace between tax-exempt organizations and taxpaying small businesses.

IRSA pledges its assistance in working with you in achieving a just and lasting solution to the ongoing liability crisis in America.

TESTIMONY OF THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS ON "THE VOLUNTEER PROTECTION ACT OF 1987," (S. 929)

SUBMITTED FOR THE RECORD
TO THE SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

SENATE JUDICIARY COMMITTEE -- MAY 20, 1988.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, WE ARE PLEASED TO SUBMIT THIS STATEMENT FOR THE RECORD ON BEHALF OF THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS (NATaT). OUR MEMBERS ARE MORE THAN 13,000 TOWNS, TOWNSHIPS AND SMALL COMMUNITIES NATIONWIDE WHICH ARE REPRESENTATIVE OF THE MAJORITY OF GENERAL PURPOSE GOVERNMENTS IN THE UNITED STATES. THAT STATISTIC MAY BE A SURPRISING ONE FOR THE MEMBERS OF THIS COMMITTEE, BUT IT IS VERY IMPORTANT TO VIEW OUR STATEMENT IN LIGHT OF THIS FACT; OF THE 39,000 UNITS OF GENERAL PURPOSE GOVERNMENT IN THE UNITED STATES -- THAT IS, EVERY MUNICIPALITY, COUNTY, TOWN AND TOWNSHIP -- SEVENTY-TWO PERCENT (OR 28,484) ARE UNDER 3,000 IN POPULATION. FULLY HALF OF ALL GENERAL PURPOSE GOVERNMENTS, MR. CHAIRMAN, APPROXMATELY 19,700, SERVE POPULATIONS OF LESS THAN ONE THOUSAND! AND THE VAST MAJORITY OF THESE GOVERNMENTS ARE LED BY VOLUNTEERS; LOCAL OFFICIALS WHO DONATE THEIR TIME AND THEIR TALENTS AS A SERVICE TO THEIR NEIGHBORS IN THE COMMUNITY.

MR. CHAIRMAN, VOLUNTARISM IS WHAT KEEPS SMALL TOWN AMERICA ALIVE, AND THE CRISIS IN LIABILITY INSURANCE IS THREATENING THE FABRIC OF THESE SMALL GOVERNMENTS BY PUTTING VOLUNTEER LOCAL

OFFICIALS AT RISK THORUGH EXPOSURE TO LAWSUITS. THE LACK OF THE AVAILABILITY OF LIABILITY INSURANCE FOR SMALL GOVERNMENTS, AND THE PEOPLE WHO VOLUNTEER TO KEEP THEM GOING, AFFECTS THE WILLINGNESS OF THOSE POEPLE TO SERVE ON LOCAL BOARDS OR TO STAND FOR PUBLIC OFFICE.

THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS BELIEVES THAT DEDICATED LOCAL LEADERS NEED THE SUPPORT OF THE NATIONAL AND STATE GOVERNMENTS TO CORRECT PRESENT PROBLEMS WITHIN THE SYSTEM WHICH PENALIZE -- RATHER THAN PROTECT -- OFFICIALS WHO SERVE LOCAL COMMUNITIES. THAT IS WHY WE SUPPORT ANY EFFORT TO INDEMNIFY THESE VOLUNTEERS AGAINST LIABILITIES ARISING FROM THEIR CONTRIBUTIONS TO LOCAL GOVERNMENT; WE PARTICUARLY SUPPORT THE THRUST OF HR. 9ll AND S. 929, "THE VOLUNTEER PROTECTION ACT OF 1987."

THE LIABILITY PROBLEM

THERE IS NO QUESTION THAT THE MUNICIPAL INSURANCE FIELD NO LONGER ADEQUATELY SERVES LOCAL GOVERNMENTS -- MUNICIPAL INSURANCES RATES HAVE CLIMBED 50 PERCENT, 100 PERCENT, 200 PERCENT, AND IN SOME CASES 1,000 PERCENT. UNFORTUNATELY THERE ARE BUT A HANDFUL OF INSURANCE COMPANIES TODAY WHICH ARE WILLING TO WRITE MUNICIPAL INSURANCE AT ALL.

THEIR INABILITY TO OBTAIN LIABILITY INSURANCE PUTS LOCAL OFFICIALS IN FEAR OF SERIOUS RISK, THEY FEEL THEIR PERSONAL ASSETS MAY BE THREATENED, AND THIS IN TURN CLEARLY DISCOURAGES PUBLIC SERVICE.

THIS IS NOT A MINOR CONCERN, AS EVIDENCED BY A SURVEY DONE IN 1986 BY THE KANSAS ASSOCIATION OF TOWNSHIPS, AN ORGANIZATION OF MOSTLY RURAL FARM COMMUNITIES WITH VERY LOW BUDGETS. OUT OF 105 RESPONSES TO THIS SURVEY, 45 LOCAL OFFICIALS EXPRESSED ALARM AND CONCERN THAT THEY WOULD NOT BE ABLE TO RENEW THEIR POLICIES, TWENTY-FIVE WERE UNABLE TO GET INSURANCE, AND EIGHT GOVERNMENTS INDICATED THEY WERE LOSING OR HAD LOST BOARD MEMBERS AS A RESULT. FOR EXAMPLE, IN ELK TOWNSHIP (OSAGE COUNTY) OFFICIALS REPORTED "WE NEED MORE INSURANCE COVERAGE AND CANNOT GET IT. INSURANCE COST IS GETTING PROHIBITIVE. WE APPLIED AT FIVE DIFFERENT INSURANCE COMPANIES OR AGENTS FOR DIRECTORS' INSURANCE, AND NO ONE WILL WRITE IT. IF WE CANNOT GET THIS INSURANCE WE ARE GOING TO RESIGN -- AND WE HAVE NOT HAD A CLAIM."

SOME SMALL COMMUNITIES HAVE FOUND INSURANCE COMPANIES WILLING TO UNDERWRITE OR RENEW LIABILITY POLICIES, BUT THE PREMIUMS ARE OFTEN FAR TOO HIGH. FOR EXAMPLE, IN PENNSYLVANIA'S SOUTH LEBANON TOWNSHIP, LOCATED IN LEBANON COUNTY, THE INSURANCE PREMIUM MORE THAN DOUBLED IN 1986 FROM $22,000 TO $46,000. INCREASES SUCH AS THIS HAVE BEEN A COMMON OCCURRENCE FOR MANY LOCAL GOVERNMENTS.

LEGISLATIVE REMEDY

OFFICIALS FROM SMALL COMMUNITIES LOOK TO CONGRESS FOR NATIONAL LEGISLATION WHICH WILL MAINTAIN A PROPER BALANCE BETWEEN PROTECTING THE RIGHT OF REDRESS AND THE ABILITY OF DEDICATED PEOPLE TO SERVE THEIR COMMUNITIES WITHOUT FEAR OF PERSONAL JEOPARDY.

THE VOLUNTEER PROTECTION ACT IS A STEP IN THE RIGHT DIRECTION, BUT IT DOES NOT PROVIDE A TOTAL SOLUTION FOR THE PROBLEMS OF GRASSROOTS GOVERNMENTS. WE WOULD HOPE THAT THIS VEHICLE WOULD SERVE AS NOTICE OF CONGRESS' SUPPORT OF VOLUNTEERS THROUGHOUT THE UNITED STATES, AND THAT IT WOULD BE FOLLOWED BY A COMPREHENSIVE FEDERAL PLAN FOR INDEMNIFYING VOLUNTEER WORKERS.

IN MARCH OF 1986, NATAT TESTIFIED BEFORE THE HOUSE WAYS AND MEANS COMMITTEE REGARDING THE INSURANCE LIABILITY QUESTION; WE POINTED OUT SMALL GOVERNMENT CONCERNS; IN PARTICULAR WE ADDRESSED THE NEED FOR FEDERAL LEGISLATION TO PROTECT OFFICIALS AND VOLUNTEERS FROM SECTION1983 SUITS. THESE CASES, THE BULK OF WHICH ARE NOT DISCRIMINATION SUITS AT ALL, ARE THE GREATEST PROBLEM FOR MANY LOCAL AGENCIES. THE VOLUNTEER PROTECTION ACT WOULD NOT PROTECT VOLUNTEERS FROM SUCH SUITS BECAUSE THE STATES HAVE NO JURISDICTION IN FEDERAL COURT WHERE THESE CASES

ARE BROUGHT; THEREFORE, STATE LEGISLATION MAY NOT PROVIDE A TOTAL SOLUTION FOR LIABILITY PROTECTION.

WE RECOMMEND THAT THE COMMITTEE ADDRESS THESE CONCERNS. WE BELIEVE THAT ADDITIONAL LEGISLATION IS REQUIRED -- LEGISLATION WHICH PROVIDES PROVIDES PROTECTION FOR LOCAL LEADERS FROM PERSONAL INJURY IN FEDERAL COURT.

IN THE MEANTIME, HOWEVER, WE CERTAINLY SUPPORT THE THRUST OF THIS LEGISLATION. THE CAP OF $300 ANNUALLY FOR HONORARIA RECEIVED BY VOLUNTEERS IN GOVERNMENT SERVICE, IT NOW APPEARS, MAY BE SOMEWHAT LOW IN VIEW OF THE FACT THAT INDIVIDUALS WHO SERVE ON PUBLIC COMMISSIONS, SUCH AS PARKS AND RECREATION, AND ZONING COMMISSIONS, MAY RECEIVE $50 PER MEETING OR MORE AND STILL BE CONSIDERED VOLUNTEERS. ALTHOUGH WE REALIZE THE DIFFICULTY OF DRAWING A LINE BETWEEN "PAID" AND "VOLUNTEER" WORKERS, WE WOULD SUGGEST RAISING THE CEILING TO $600 PER YEAR (OR $50 PER MONTH) FOR GOVERNMENT VOLUNTEERS; THIS WOULD GREATLY INCREASE THE SCOPE OF COVERAGE WHILE AT THE SAME TIME COVER ONLY THOSE WHO CLEARLY "DONATE" THEIR TIME AND EXPERTISE AS OPPOSED TO THOSE WHO DEPEND ON SUCH REMUNERATION FOR AN APPRECIABLE PART OF THEIR LIVING.

AGAIN, MR. CHAIRMAN, WE BELIEVE THAT ADDITIONAL VOLUNTEER PROTECTION LEGISLATION IS REQUIRED, AND WE STRONGLY URGE THE COMMITTEE TO CONSIDER PROVIDING COMPREHENSIVE PROTECTION FOR VOLUNTEER OFFICIALS IN SMALL AND RURAL GOVERNMENTS, SO THAT

THEY MIGHT CONTINUE TO DEDICATE THEIR TIME TO THEIR COMMUNITIES WITHOUT APPREHENSION OR FEAR OF PERSONAL LIABILITY.

WE HAVE ATTACHED OUR 1986 LIABILITY STATEMENT BEFORE THE HOUSE WAYS AND MEANS COMMITTEE AND RESPECTIVELY REQUEST THAT THIS SUBCOMMITTEE INCLUDE OUR ATTACHMENT AS PART OF THIS HEARING RECORD.

WE APPRECIATE THIS OPPORTUNITY TO PRESENT OUR VIEWS AND LOOK FORWARD TO WORKING WITH THE COMMITTEE IN FASHIONING PROTECTIVE LEGISLATION THAT SERVES THE TOWNS, TOWNSHIPS AND SMALL CITIES, ACROSS THE UNITED STATES.

STATEMENT SUBMITTED BY
SALLY COX, PRESIDENT OF
THE NATIONAL CHILD CARE ASSOCIATION
TO THE SENATE JUDICIARY SUBCOMMITTEE
ON COURTS AND ADMINISTRATIVE PRACTICE
ON THE VOLUNTEER PROTECTION ACT
(S. 929/ H.R. 911)
May 20, 1988

Mr Chairman, I am Sally Cox, of Houston, Texas, President of the National Child Care Association (NCCA). The NCCA represents proprietary, or for-profit, tax-paying child care providers nationwide.

We commend you for holding a hearing on the Volunteer Protection Act (S. 929/ H. R.911) which addresses a major and critical need in our society today - the liability crisis affecting all levels of voluntarism. It is quite clear that for several years now, media attention given to the liability insurance "crisis", combined with tales of large and complicated lawsuits, has seriously eroded the volunteer spirit of many individuals.

Our industry also has been quite prone to this liability "crisis", even though we stand tall in our degree of professionalism and partnerships with the parents of the children entrusted to us.

We support the proposed legislation, but would like you to consider this additional perspective:

1) The solution proposed that State laws providing immunity from civil liability should be comprehensive, i.e., include all volunteers such as committee chairpersons and members, and not be limited only to duly appointed officers and directors.

2) The subcommittee should seriously consider providing positive incentives to States enacting such laws, e.g., a one percent increase in Social Services Block Grant Funds.

3) Care must be taken that such immunity is also afforded the small business community and not be limited only to tax-exempt organizations and governmental entities. Otherwise, another unfair competitive advantage would be added to the vast array already available to the tax-exempt world (e.g. exemption from federal and state income taxes, and state property tax, subsidized postal rates, etc.). At a time when the House Ways and Means Committee is seriously reviewing the unrelated business income tax (UBIT) regulations, it would be unfair to add another competitive advantage to tax-exempts.

Hundreds of thousands of small businesses still would fear undue liability from civil actions and would continue to face either denial of liability insurance coverage or exorbitant premiums due to a reduced organizational base.

Please take these points into consideration as you review this much needed legislation. We stand ready to work with you in improving the volunteer situation today in a comprehensive and fair manner.

ncjw

National Council of Jewish Women
15 East 26th Street • New York, N.Y. 10010
Telephone: (212) 532-1740

Lenore Feldman
National President

Dodie Perlov, CAE
Executive Director

Testimony submitted on the "Volunteer Protection Act"
by the National Council of Jewish Women
to the Senate Subcommittee on Courts and Administrative Practice
Senate Judiciary Committee
May 20, 1988

For nearly 100 years, the volunteers of the National Council of Jewish Women (NCJW) have served communities throughout this nation through a combined program of community service, education and advocacy. The 100,000 members in 200 Sections nationwide exemplify the finest tradition of voluntarism. NCJW currently runs some 2000 direct service projects serving the needs of families, with special attention to the most vulnerable segments of our society--children, youth, and the aged. As a volunteer-intensive organization, we actively promote citizen responsibility for the communities in which they live.

In recent years, the increased threat of litigation and the dramatic escalation in liability insurance have been disincentives to voluntarism. There is every reason to believe that only federal leadership in this area can reverse the chilling effect these realities have had on volunteer participation. Therefore, we strongly endorse the "Volunteer Protection Act" (S. 929/H.R. 911) as an appropriate response to this growing crisis.

While we agree that some mechanism is essential to compel states to enact uniform legislation to grant liability immunity to non-profit organization volunteers who are acting in good faith within the scope of their official duties, we are troubled by the sanction currently included in this bill. To impose a penalty cut in a state's Social Services Block Grant funding would constitute a kind of double jeopardy to the very population served by voluntary social service organizations. These critical funds which serve so many needy people in our communities have already been diminished by budget cuts and inflation.

Rather than penalizing volunteers and their at-risk clients, we would urge the sponsors to seek alternative sanctions or to consider incentives instead. We would be interested in working with you to accomplish these objectives. Thank you for the opportunity to contribute to the deliberations on this vital legislation.

The National PTA
Office of Governmental Relations
[illegible] Street N.W.
Washington, D.C. [illegible]
[illegible]

Testimony by
THE NATIONAL PARENT-TEACHER ASSOCIATION

Before the
Judiciary Committee's
Subcommittee on Courts and Administration Practice
United States Senate

Regarding
the concept of volunteer protection
and
S. 929, the Volunteer Protection Act

Submitted by
Millie Waterman
Vice-President for Legislative Activity
The National PTA

May 20, 1988

Mr. Chairman, and members of the Senate Judiciary Committee's Subcommittee on Courts and Administrative Practice. The National PTA thanks you for the opportunity to submit a statement regarding volunteer liability, an issue that has major implications for the current and future members of our organization. We also commend Senator John Melcher for his sponsorship of S. 929, the Volunteer Protection Act, as well as those Senators who have signed on to S. 929 as cosponsors. The measure is a major step in assuring individual volunteers some basic and minimal protection against liability litigation.

The National PTA is the nation's largest child advocacy organization with over 6.4 million members representing all 50 states and the District of Columbia. As a 501 (c) (3) tax-exempt organization adhering to noncommercial, nonpartisan and nonsectarian principles, the National PTA pursues programs, legislation and activities meeting the needs of children and youth in the community. Members join local units which are school-linked and total over 25,000 nationwide, and are automatically members of the state PTA and the National PTA.

PTA members are engaged in a vast array of programs and activities which strive to assure quality education, health, and protection programs for children. While each local unit is programmatically independent, PTA members are actively engaged as officers of their local unit, volunteers in their school and community, legislative advocates for children at the local, state, and federal levels, and leaders in developing programs which involve parents in the education of their children.

PTA members across the country volunteer thousands of hours of their time in such activities as preventing drug and alcohol abuse; assuring child safety and protection, including the safety of latchkey programs; working as school and community volunteers, assisting in such tasks as lunchroom supervisors, classroom aides, and tutors, crossing guards, hosting and supervising extra-curricular activities; sponsoring teacher and student recognition days; chaperoning chemical-free graduation parties; hosting and/or chaperoning educational field trips for students, and assisting in summer school activities; monitoring local, state and federal legislation, visiting public officials urging better laws for children and youth, and coordinating strong legislative committees in each local unit; and, sponsoring fundraising activities such as book fairs, science fairs, athletic events and field days, and the sale of refreshments at school and carnivals. The efforts and dedication of PTA members frequently supplement the educational program, provide caring supportive programs for children and youth, and meet the obligation of citizenship by devoting free time to community and public efforts.

The opportunity for a parent to participate and enhance his or her child's life must not be threatened by the potential of law suits. Yet throughout our organization, we've seen an increasing threat to the financial security of our members caused by either liability lawsuits or the threat of them. We've had cases where individuals declined to serve as PTA officers, we've had cases where PTA units could not afford the rising costs of liability insurance, and, we've had cases where PTA units have had to reduce the spectrum of liability coverage. In addition, while we lack systematic data, we know that there is a perception of fear about the possibility of being sued. Under these circumstances, how long can we expect volunteers to continue to come forward.

The major focus of discussion in our organization pertaining to liability exposure has been related to the increased costs, reduced coverage, and frequent inaccessibility to liability insurance. Many school districts which in the past have covered

PTA units often have difficulty in securing adequate insurance themselves. Many of our local units are attempting to reduce their risks through more effective management, such as obtaining audited financial statements annually, approving budgets by a governing board, bonding the bookkeeper and treasurer, evaluating activities that might increase risk, keeping well documented minutes of every meeting, providing more effective volunteer training, and developing well-defined job descriptions. However, these measures by themselves are not sufficient to assure individual volunteers that they would not be exposed to a lawsuit which could cost them their personal assets.

Clearly, the three areas of liability concern for individual volunteers are:

1. Volunteers delivering direct service;
2. Volunteers as officers of the board of managers; and/or
3. Volunteers on advisory committees, coalitions, and commissions.

S. 929 is a critical step in addressing these concerns and in providing additional protection to volunteers. Clearly, we are not asking for a blanket protection where a volunteer is a direct participant in wrong-doing or where willful and unintentional misconduct occurs. However, we believe that where a lawsuit arises in the case of an injury that was not a result of a deliberate act during a non-profit program or activity, S. 929 will make it more difficult for plaintiffs to meet the heightened burden of proof. Therefore, the plaintiffs are less likely to sue the individual volunteers or the individual board members.

Secondly, while S. 929 would provide individual volunteer protection, it also would motivate more effective management practices. The tandem complement each other, and the volunteer organizations understand that those who exercise sound management are those who are the most likely to successfully defend themselves against lawsuits.

Thirdly, it is understood that the passage of S. 922 does not eliminate the need for blanket insurance coverage by the non-profit nor does it suggest that S. 929 is blanket coverage itself. We also understand that in the short run, there will be considerable testing and defining of S. 929, especially as it pertains to defining willful and wanton misconduct. As one of our Colorado members has stated "even much of the state legislation pertaining to protection of volunteers is untested and may not cover all activities. Every state PTA should encourage its local units to have additional liability coverage." In the long term, we believe the volunteer protection laws will have the effect of reducing claims (and eventually premiums) as well as reducing the kind and amount of coverage required by our organization.

Fourthly, the National PTA opposes the "trigger mechanism" that would withhold one percent of Social Services Block Grants from any state that fails to extend liability protection to volunteers by the beginning of the 1989 fiscal year, and redistribute those funds to the states that have complied. Social Services monies are critical in providing support systems to children and families and we reject the notion that they should suffer as a result of a state legislator not wanting to reform tort laws. In addition, we believe that a "carrot" would be more effective, and that a state should receive an additional one percent social services Block Grant allocation if they enact volunteer protection laws.

The National PTA believes S. 929 will have a major impact on recruiting and retaining quality volunteers, in improving the management and administration of volunteer services, and in reducing insurance premiums. In the case of the PTA, the chief beneficiaries will be our children--and thereby--society. We thank the subcommittee again for their interest in assuring protection for thousands of volunteers across the country.

CORRESPONDENCE

National
Association of
Towns and Townships

May 11, 1988

Mr. Tom Young, Counsel
Senate Judiciary Committee
Subcommittee on Courts and Administrative
Practice
223 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Young:

The National Association of Towns and Townships (NATaT) appreciates the opportunity to submit a statement for the record at the upcoming hearings on S.929, "The Volunteer Protection Act." We are encouraged that the committee has scheduled this hearing and we certainly hope that the committee, and Congress, will move expeditiously to enact a volunteer protection bill.

I have enclosed a copy of our statement. Please note that we have asked that the committee include in its hearing record an earlier statement NATaT presented to the House Ways and Means Committee. That statement deals with the much larger issue of local government liability.

Should you have any questions regarding our position, please feel free to contact me. Once again, we thank you for this opportunity.

Sincerely,

Ann Cole
Director of Federal Affairs

AC/lcc
Enclosure

1522 K Street, Northwest, Suite 730 Washington, D.C. 20005 Telephone: (202) 737-5200

TESTIMONY OF THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS
BEFORE THE HOUSE WAYS AND MEANS COMMITTEE
MONDAY, MARCH 17, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM LARRY MERRILL, DEPUTY EXECUTIVE DIRECTOR, MICHIGAN TOWNSHIPS ASSOCIATION, REPRESENTING THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS, AN ORGANIZATION OF OVER 13,000 TOWNS, TOWNSHIPS AND SMALL GOVERNMENTS NATIONWIDE. THE VAST MAJORITY OF THE COMMUNITIES WE REPRESENT HAVE POPULATIONS UNDER 25,000. OFFICIALS IN LEADERSHIP POSITIONS RANGE FROM THOSE WHO HAVE BEEN ELECTED AND ARE ON A SALARIED BASIS, TO THOSE WHO ARE VOLUNTEERING THEIR TIME WITHOUT ANY REMUNERATION WHATEVER, AND WHO DO SO AS A SERVICE TO THEIR FRIENDS AND NEIGHBORS IN THE COMMUNITY.

WE ARE STRUGGLING TO DEAL WITH THE LIABILITY CRISIS SITUATION. IN THE PAST YEAR, LOCAL GOVERNMENTS THROUGHOUT THE COUNTRY HAVE SEEN THE MUNICIPAL INSURANCE FIELD VIRTUALLY COLLAPSE -- MUNICIPAL INSURANCE RATES HAVE CLIMBED 50 PERCENT, 100 PERCENT, 200 PERCENT, AND IN SOME CASES 1,000 PERCENT. AND TO MAKE MATTERS WORSE, THERE ARE BUT A HANDFUL OF INSURANCE COMPANIES THAT TODAY ARE WILLING TO WRITE MUNICIPAL INSURANCE AT ALL.

AN ADDITIONAL THREAT IS THAT TO LOCAL OFFICIALS PERSONALLY WHO, IS THEIR COMMUNITY CANNOT GET LIABILITY INSURANCE, MAY FIND

THEMSELVES AND THEIR ASSETS THE TARGET OF LAWSUITS. THIS IS NOT A MINOR CONCERN, AS EVIDENCED BY A SURVEY DONE EARLIER THIS YEAR BY OUR KANSAS ASSOCIATION. THEIR MEMBERS ARE RURAL, MOSTLY FARM COMMUNITIES WITH VERY LOW BUDGETS AND MOSTLY VOLUNTEER OFFICIALS.

* JUNCTION TOWNSHIP IN OSAGE COUNTY, FOR INSTANCE, SAYS, "WE NEED PUBLIC OFFICIAL INSURANCE THAT IS CHEAPER. IF WE DON'T GET SOME RELIEF WE WON'T HAVE ANYONE TO RUN FOR PUBLIC OFFICE."

* FROM ELK TOWNSHIP IN OSAGE COUNTY: "WE NEED MORE INSURANCE COVERAGE AND CANNOT GET IT. INSURANCE COST IS GETTING PROHIBITIVE. WE APPLIED AT FIVE DIFFERENT INSURANCE COMPANIES OR AGENTS FOR DIRECTORS' INSURANCE AND NO ONE WILL WRITE IT. IF WE CANNOT GET THIS INSURANCE WE ARE GOING TO RESIGN. WE HAVE NOT HAD A CLAIM."

* RINEHART TOWNSHIP IN DICKINSON COUNTY: "AMERICAN STATES ADVISED US THEY WILL NO LONGER RENEW THIS COVERAGE. INSURANCE SHOULD BE CHEAPER AND MORE AVAILABLE TO ELECTED TOWNSHIP OFFICIALS. IF INSURANCE BECOMES HARDER TO GET NO ONE IS GOING TO SERVE ON A TOWNSHIP BOARD."

* LOGAN TOWNSHIP IN MEADE COUNTY: "BOTH COMPANIES HAVE CANCELLED THE POLICIES ... I DON'T KNOW HOW THE TOWNSHIPS CAN AFFORD TOO MUCH MORE INSURANCE COSTS. WE'LL HAVE A HARD TIME GETTING OFFICIALS TO SERVE ON TOWNSHIP BOARDS IF WE GET IN ANY LAW SUITS."

* FROM GRANT TOWNSHIP IN DECATUR COUNTY, "WE CANNOT KEEP INSURANCE. WE HAVE HAD THREE DIFFERENT POLICIES IN THREE YEARS. WE HAVE NEVER HAD A CLAIM. NO COMPANY WANTS TO INSURE TOWNSHIP."

* LAKE TOWNSHIP, HARVEY COUNTY: "OUR LIABILITY INSURANCE FOR THE BOARD MEMBERS IS BEING CANCELLED OUT AND IS NOT RENEWABLE."

* AN OFFICIAL FROM GRAINFIELD, IN GOVE COUNTY IS "BEING SUED AS AN INDIVIDUAL, BECAUSE THE TOWNSHIP DOES NOT CARRY LIABILITY INSURANCE."

* FOWLER TOWNSHIP IN MEADE COUNTY: "I MAY RESIGN RATHER THAN HAVE TO RISK MY OWN WORTH FOR A TOWNSHIP."

OUT OF THE 105 RESPONSES TO THIS SURVEY, 45 EXPRESSED ALARM AND CONCERN THAT THEY WOULD NOT BE ABLE TO RENEW THEIR POLICIES, TWENTY-FIVE WERE UNABLE TO GET INSURANCE, AND EIGHT INDICATED THEY WERE LOSING OR HAD LOST BOARD MEMBERS AS A RESULT.

EXAMPLES OF OUR PREMIUM INCREASES -- AS I MENTIONED, ANOTHER MAJOR PROBLEM -- INCLUDE THESE FROM THE STATE OF PENNSYLVANIA -- TYPICAL OF WHAT IS OCCURRING ACROSS THE COUNTRY.

* IN SOUTH LEBANON TOWNSHIP, LEBANON COUNTY, THE INSURANCE PREMIUM HAS MORE THAN DOUBLED, FROM $22,000 TO $46,000.

* IN HOPEWELL TOWNSHIP, YORK COUNTY, LIABILITY INSURANCE

COSTS INCREASED FROM $6,000 TO $8,650, A 26 PERCENT INCREASE IN A SINGLE YEAR.

* IN HAVERFORD TOWNSHIP, DELAWARE COUNTY, RENEWAL OF ALL INSURANCE HAS INCREASED FROM $225,000 TO $460,000.

* THE LIABILITY COVERAGE FOR THE CITY OF HARRISBURG'S STEAM PLANT GENERATOR INCREASED FROM $48,000 IN 1984 TO $85,000 THIS YEAR.

* IN MECHANICSBURG, THE ANNUAL COST OF INSURING THE BOROUGH INCREASED FROM $35,300 TO NEARLY $95,000 IN A SINGLE YEAR.

* IN NEW CUMBERLAND, THE COST OF PROVIDING COVERAGE INCREASED FROM $18,000 LAST YEAR TO MORE THAN $30,000 THIS YEAR.

* IN BELLEFONTE, CENTRE COUNTY, THE COST OF GENERAL LIABILITY COVERAGE INCREASED FROM $8,100 LAST YEAR TO NEARLY $26,000 THIS YEAR, AN INCREASE OF 213 PERCENT.

* IN MEDIA, DELAWARE COUNTY, THE COST OF COVERAGE FOR PUBLIC OFFICIALS INCREASED FROM $7,500 IN 1984 TO MORE THAN $25,000 THIS YEAR.

* IN SCOTTSDALE BOROUGH, WESTMORELAND COUNTY, THE COST OF LIABILITY INSURANCE INCREASED FROM $7,300 TO NEARLY $25,000 IN JUST A YEAR.

* IN GLENDON, NORTHAMPTON COUNTY, A BOROUGH OF 360 POPULATION, THE COST FOR LIABILITY PROTECTION JUMPED FROM $252 IN 1984 TO $2,500 THIS YEAR, AN INCREASE OF 852 PERCENT. WHILE THE $2,500 PRICE TAG MAY NOT APPEAR EXCESSIVE, IT IS SIGNIFICANT TO A MUNICIPALITY THAT HAS NO POLICE, NO VOLUNTEER FIRE COMPANY, NO ROAD CREW AND AN ANNUAL BUDGET OF ONLY $65,000.

* IN DOVER TOWNSHIP, YORK COUNTY, THE TOWNSHIP WAS ASSESSED A $25,000 INSPECTION FEE AND A $10,000 "INTERIM FEE"," OVER AND ABOVE THE INSURANCE PREMIUM.

* IN MEADVILLE, CITY OFFICIALS SAW THEIR POLICE PROFESSIONAL LIABILITY POLICY CANCELLED THREE TIMES. THE LAST TERMINATION WAS MADE ON A TEN-DAY NOTICE. TO COMPOUND MATTERS FURTHER, THE COST OF THE POLICY HAD INCREASED MORE THAN 100 PERCENT WHILE THE COVERAGE WAS REDUCED FROM ONE MILLION DOLLARS TO FIVE HUNDRED THOUSAND DOLLARS.

* IN THE CITY OF ALLENTOWN, OFFICIALS SAW THEIR COVERAGE REDUCED FROM 35 MILLION DOLLARS TO 5 MILLION DOLLARS FOR GENERAL LIABILITY AND ONE MILLION DOLLARS FOR POLICE PROFESSIONALS. AND YET, THE COST FOR ALL TYPES OF COVERAGE INCREASED FORM $185,000 TO $500,000.

THE LIST OF HORROR STORIES GOES ON AND ON. IN MOST CASES LOCAL OFFICIALS SIMPLY HAVE BEEN UNABLE TO RENEW THEIR LIABILITY INSURANCE WITH A CARRIER THAT WILL PROVIDE ADEQUATE COVERAGE AT A REASONABLE COST.

AND AS YOU HAVE HEARD, PARTICULARLY IN SMALLER MUNICIPALITIES, THERE IS OFTEN NO CARRIER INTERESTED IN PROVIDING NEEDED COVERAGE.

AS THE AVAILABILITY AND AFFORDABILITY OF MUNICIPAL INSURANCE CONTINUES TO BECOME MORE UNCERTAIN, THE CONSEQUENCES FOR THE COUNTRY'S LOCAL GOVERNMENTS AND THEIR TAXPAYERS COULD BE DEVASTATING.

THE PARTICULAR CASE MOST OFTEN SINGLED OUT AS INFLUENCING THE CHANGES IN OUR CURRENT MARKETPLACE OCCURRED IN JACKSON TOWNSHIP, NEW JERSEY, IN 1963: A CASE WHICH HAS REVERBERATED CLEAR ACROSS THE UNITED STATES AND AS FAR AS LLOYDS OF LONDON. IT WAS IN JACKSON TOWNSHIP THAT 97 RESIDENTS CLAIMED THEIR DRINKING WATER HAD BEEN CONTAMINATED BY CHEMICALS LEAKING FROM A LANDFILL WHICH HAD BEEN CLOSED YEARS EARLIER BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY.

THE CITIZENS WERE SUCCESSFUL IN THEIR LITIGATION, AND A JURY AWARDED THEM 15.8 MILLION DOLLARS -- LATER REDUCED TO 5.8 MILLION ON APPEAL BECAUSE OF THE COURT'S PRECEDENT-SETTING INTERPRETATION. COMPANIES INSURING THE TOWNSHIP WERE FORCED TO PAY THE FULL AWARD DESPITE THE FACT THAT THE POLICY THEY HAD ISSUED AMOUNTED TO ONLY ONE MILLION DOLLARS.

AS A RESULT OF THE JACKSON TOWNSHIP CASE, ONE INSURANCE COMPANY IN PENNSYLVANIA CANCELLED THREE HUNDRED MUNICIPAL POLICIES IN THAT STATE ALONE. AND I WOULD LIKE TO POINT OUT, MR. CHAIRMAN, THAT OFTEN WE ARE FINDING POLICIES COMPLETELY CANCELLED WHETHER

OR NOT THE MUNICIPALITY HAS EVER FILED A CLAIM.

OF COURSE THE JACKSON TOWNSHIP CASE IS NOT AN ISOLATED INSTANCE. EVERY DAY, LOCAL OFFICIALS ARE BECOMING FRUSTRATED AND FRIGHTENED BY THE ENORMITY OF THE CRISIS. OUR RESOURCES ARE BEING STRETCHED TO THE LIMIT AND IN MANY CASES -- ESPECIALLY WITH THE IMPLICATIONS OF GRAMM-RUDMAN-HOLLINGS AND THE REAL THREAT TO GENERAL REVENUE SHARING ALL COMING ON AT ONE TIME -- OUR VERY SURVIVAL AS AN ADEQUATELY FUNCTIONING UNIT OF GOVERNMENT IS IN QUESTION.

LET ME SPEAK FOR A MOMENT FROM THE PERSPECTIVE OF A SMALL TOWN OFFICIAL WHO, IN THE FACE OF INCREASINGLY BURDENSOME MANDATES FROM THE FEDERAL GOVERNMENT, THE DOWNTURN IN OUR RURAL ECONOMY, AND THE PROPOSED LOSS OF OUR ONLY FEDERAL ASSISTANCE, IS TRYING TO HOLD A COMMUNITY TOGETHER. EXTREME AS HE SITUATION MAY BE FOR PRIVATE BUSINESS, MUNICIPALITIES ACROSS THIS COUNTRY ARE FACED WITH AN EVEN MORE COMPLEX PROBLEM. CHOICES EXIST FOR THE PRIVATE SECTOR THAT ARE NOT AVAILABLE TO US. PERHAPS THEY CAN COME UP WITH HIGHER PREMIUMS BY RAISING PRICES; THEY MAY BE ABLE TO SELF-INSURE; AND IN A WORST-CASE INSTANCE, THEY CAN GO OUT OF BUSINESS. WE ARE A GOVERNMENT, HOWEVER, CHARGED WITH THE RESPONSIBILITY TO PROVIDE ESSENTIAL SERVICES LIKE POLICE PROTECTION ROAD REPAIR, HEALTH SERVICES, A FIRE DEPARTMENT -- AND WE DO NOT HAVE THAT OPTION.

A TOWN OR CITY CANNOT GO BANKRUPT, MR. CHAIRMAN. SO WHAT CAN WE DO? FOR THE MOST PART, SELF-INSURANCE IS NOT AN ALTERNATIVE FOR

TOWNS AND TOWNSHIPS, BECAUSE WE HAVE SUCH LIMITED BUDGETS -- WE DON'T HAVE THE FLEXIBILITY IN THE REVENUE SOURCES THAT LARGER CITIES HAVE. BECAUSE SO MANY OF OUR LOCAL OFFICIALS ARE PART-TIME AND VOLUNTEERS, WE ARE MORE VULNERABLE TO HAVING THEM RESIGN FROM OFFICE. IN OTHER WORDS, WE CAN'T AFFORD THE CURRENT SITUATION -- WE CAN'T AFFORD THE ALTERNATIVES -- AND WE CAN'T AFFORD TO LOSE OUR LEADERSHIP.

THERE DOES, HOWEVER, REMAIN ONE OTHER ALTERNATIVE -- IF YOU CAN CALL IT THAT. WE CAN GO WITHOUT INSURANCE COVERAGE UNTIL WE CAN AFFORD IT AGAIN, AS COMMUNITIES ACROSS THE COUNTRY ARE DOING TODAY. THIS LEAVES MUNICIPALITIES TOTALLY VULNERABLE, AND PUTS AN INTOLERABLE BURDEN, SHOULD CLAIMS ARISE, ON LOCAL OFFICIALS AND INDIVIDUAL CITIZENS. AS YOU HAVE SEEN, THE ENORMITY OF THIS SITUATION IS CAUSING US TO LOSE GOOD VOLUNTEER TOWN AND TOWNSHIP LEADERS WHO CANNOT ACCEPT THIS PERSONAL LIABILITY -- AND SHOULD NOT BE EXPECTED TO.

IN AN EFFORT TO COME TO GRIPS WITH THESE ISSUES, THE BOARD OF DIRECTORS OF THE NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS DIRECTED AN INVESTIGATION INTO THE POSSIBILITIES FOR FEDERAL INVOLVEMENT IN RESOLVING THE SITUATION. AS A RESULT, ON JANUARY 14, 1986, WE CONVENED AND FACILITATED THE FIRST MEETING OF REPRESENTATIVES OF LOCAL, STATE AND FEDERAL GOVERNMENT, THE INSURANCE INDUSTRY AND OTHER PRIVATE SECTOR INTERESTS. PARTICIPANTS IN OUR DAY-LONG "LIABILITY SUMMIT" INCLUDED REPRESENTATIVES FROM:

WHITE HOUSE OFFICE OF INTERGOVERNMENTAL AFFAIRS

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

HOUSE SUBCOMMITTEE ON COMMERCE, TRANSPORTATION AND TOURISM

OFFICE OF SENATOR PAUL SIMON

OFFICE OF CONGRESSMAN JOHN PORTER

U.S. DEPARTMENT OF JUSTICE

U.S. ENVIRONMENTAL PROTECTION AGENCY

CITY OF VIRGINIA BEACH, VIRGINIA

U.S. CONFERENCE OF MAYORS

NATIONAL ASSOCIATION OF COUNTIES

NATIONAL LEAGUE OF CITIES

NATIONAL CONFERENCE OF STATE LEGISLATURES

CONNECTICUT COUNCIL OF SMALL TOWNS

PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

MARYLAND INSURANCE DIVISION

AMERICAN INSURANCE ASSOCIATION

PUBLIC RISK AND INSURANCE MANAGEMENT ASSOCIATION

NATIONAL INSURANCE CONSUMERS ORGANIZATION

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION

NATIONAL SHERIFFS ASSOCIATION

CRUM & FORSTER INSURANCE COMPANIES

GARDNER, MOSS AND HOPPER, ATTORNEYS-AT-LAW

ARNOLD AND PORTER, ATTORNEYS-AT-LAW

RISK SCIENCE INTERNATIONAL

RISK INSURANCE MANAGEMENT SOCIETY

THE THIRTY-FIVE PARTICIPANTS AT THE SUMMIT EXAMINED THE AVAILABILITY AND AFFORDABILITY OF INSURANCE, THE VULNERABILITY OF LOCAL GOVERNMENTS TO LAWSUITS UNDER FEDERAL ENVIRONMENTAL AND CIVIL RIGHTS STATUTES, AND POSSIBILITIES FOR FEDERAL ACTION TO SOLVE THE PROBLEMS.

WE FOCUSED ON SECTION 1983 OF THE CIVIL RIGHTS ACT OF 1871 AND ON FEDERAL ENVIRONMENTAL STATUTES, THE SOURCES OF MOST REQUIREMENTS, LITIGATION AND JUDGMENTS INVOLVING THE FEDERAL GOVERNMENT. THESE ARE AREAS WHERE REMEDIAL ACTION BY STATE GOVERNMENTS IS NOT THE ANSWER, SINCE IF THERE IS A CAUSE OF ACTION AGAINST US IN EITHER SECTION 1983 OR THE ENVIRONMENTAL AREA, THE PLAINTIFFS CAN SUE IN FEDERAL COURT -- THEREBY OBVIATING THE NEED TO DEAL WITH THE STATE COURTS. IN ESSENCE, WHATEVER THE STATES ARE DOING TO RESOLVE THE CRISIS -- AND MANY ARE VERY ACTIVE -- IT IS IMMATERIAL IN THOSE TWO AREAS, AND WE MUST LOOK TO THE FEDERAL GOVERNMENT FOR POSSIBLE SOLUTIONS.

THE ORIGINAL BASIS FOR SECTION 1983 WAS AS AN HUMAN RIGHTS STATUTE RIGHT AFTER THE CIVIL WAR, WHICH ENABLED THE FEDERAL GOVERNMENT TO STEP IN UNDER THE 14TH AMENDMENT WHERE STATE LAWS WEREN'T BEING ENFORCED. IN THE FIRST HUNDRED YEARS OF THIS LAW THERE WERE APPROXIMATELY 200 SUITS FILED -- BUT IN THE LAST YEAR, UNDER THIS LAW, THERE WERE TWENTY-FOUR THOUSAND SUITS FILED, NOT INCLUDING SUITS FILED BY PRISON INMATES AGAINST THE STATE FOR ALLEGED CIVIL RIGHTS VIOLATIONS. MANY OF THESE TWENTY-FOUR THOUSAND LAW SUITS HAVE NOTHING WHATEVER TO DO WITH TRADITIONAL HUMAN RIGHTS. IF YOU DON'T LIKE, FOR INSTANCE, A

LOCAL ZONING DECISION, SUITS HAVE BEEN ALLOWED UNDER SECTION 1983 ALLEGING THAT YOUR CIVIL RIGHTS HAVE BEEN INFRINGED. THIS INTERPRETATION OF SECTION 1983 HAS CAUSED A REAL EXPLOSION IN LITIGATION, PARTICULARLY SINCE THERE ARE NO CAPS ON EITHER ATTORNEYS FEES OR AWARDS IN THE FEDERAL COURT SYSTEM UNDER THIS STATUTE. WE EVEN HAVE REPORTS THAT AN ALLEGATION UNDER SECTION 1983 IS BEING ROUTINELY ADDED TO SUITS UNDER STATE LAW, JUST IN CASE THE STATE ACTION FAIL(S).

YOU WILL HEAR A LOT OF HORROR STORIES ABOUT ATTORNEYS' FEES AT THIS HEARING, I IMAGINE. JUST ONE EXAMPLE WHICH WAS CITED AT OUR SUMMIT INVOLVED A CASE WHERE A MUNICIPAL EMPLOYEE SUED FOR BACK PAY AND WAS AWARDED THE MONEY HE ASKED FOR -- $15,000 -- BUT THERE $400,000 IN ATTORNEYS FEES.

AND THE OTHER PROBLEM -- AWARDS. DAMAGES AWARDED UNDER THE DOCTRINE OF JOINT AND SEVERAL LIABILITY, FOR INSTANCE, ARE CREATING A TREMENDOUS PROBLEM, SINCE DAMAGES CAN BE COLLECTED FROM PARTIES REGARDLESS OF THEIR RELATIVE PERCENTAGE OF RESPONSIBILITY. THE BURDEN GENERALLY COMES TO REST ON LOCAL GOVERNMENTS AND THEIR TAXPAYERS -- BECAUSE THE PRIVATE PARTY DEFENDANTS SELDOM HAVE ADEQUATE COVERAGE. HERE ARE SOME EXAMPLES -- JUST THE TIP OF THE ICEBERG, BUT ENOUGH TO GIVE YOU AN IDEA -- FROM NEW YORK STATE:

1. THE INJURED PARTY WAS A PASSENGER IN A CAR DRIVEN BY A DRUNK SPEEDER WHO STRUCK A TREE, WHO CLAIMED DEFECTIVE ROAD SIGNS. THE JURY FOUND THE TOWN TO BE 25% NEGLIGENT AND THE

DRIVER 75%. THE AWARD WAS $910,000, OF WHICH THE TOWN'S CARRIER PAID $900,000, AND THE CODEFENDANT $10,000. (TOWN OF LAGRANGE, DUTCHESS CO.)

2. A DRIVER STRUCK A BICYCLIST ON A TOWN HIGHWAY. THE JURY FOUND THE TOWN 5% NEGLIGENT AND AWARDED A TOTAL OF $280,000. NEVERTHELESS, THE TOWN CARRIER PAID $230,000. (TOWN OF GREECE, MONROE CO.)

3. AN UNINSURED MOTORIST RAN A STOP SIGN STRIKING ANOTHER VEHICLE IN THE INTERSECTION. THE ONLY NEGLIGENCE ATTRIBUTED TO THE TOWN WAS THAT THE STOP SIGN WAS 3 TO 4 INCHES LOWER THAN THE STANDARD. THE TOWN CARRIER SETTLED FOR $255,000 BECAUSE OF FEAR OF GREATER EXPOSURE. (TOWN OF CLARENDON, ORLEANS CO.)

4. A TOWN WAS HELD TO BE 10% NEGLIGENT IN $373,000 VERDICT, THEY PAID $273,000. (TOWN OF LANCASTER, ERIE CO.)

5. A VEHICULAR ACCIDENT ON A TOWN HIGHWAY RESULTED IN AN AWARD OF $100,000. ALTHOUGH THE TOWN WAS HELD ONLY 5% NEGLIGENT, THE TOWN AND CARRIER HAD TO PAY $85,000. (TOWN OF CALEDONIA, LIVINGSTON CO.).

THIS BRINGS US TO OUR FIRST RECOMMENDATION, MR. CHAIRMAN. WE FEEL VERY STRONGLY THAT IT IS IMPORTANT TO RESEARCH WHETHER THERE IS A CHANCE FOR A SURGICAL LEGISLATIVE REMEDY TO AMEND, IN A VERY NARROW FASHION, SECTION 1983 SO AS TO ABSOLUTELY AND COMPLETELY RETAIN THE CIVIL RIGHTS THRUST OF THE ORIGINAL LAW BUT REMOVE

SOME OF THE NON-HUMAN RIGHTS CHALLENGES THAT ARE NOW FILED UNDER THE SECTION.

OF COURSE THERE IS A DANGER IN THIS THAT SUCH AN ACTION MIGHT BE CONSIDERED AN ASSAULT ON THE CIVIL RIGHTS LAWS OF THE UNITED STATES, AND THAT SHOULD NOT BE THE INTERPRETATION. WE STRONGLY SUPPORT RETENTION OF THE ENTIRE CIVIL RIGHTS THRUST OF SECTION 1983. IT IS POSSIBLE, HOWEVER, THAT LANGUAGE IN THE ORIGINAL STATUTE WAS NOT AS PRECISE AS IT MIGHT BE TODAY WHEN WE HAVE A MUCH BROADER HISTORICAL BASE IN CIVIL RIGHTS STATUTES.

WE HAVE STRONG CONCERN ABOUT WHAT IS HAPPENING UNDER SECTION 1983. IT STRIKES US AS PART OF A CONTINUING ASSAULT ON THE STATUS OF LOCAL GOVERNMENTS AS PARTNERS IN THE FEDERAL SYSTEM. SPECIFICALLY, AN INCREASING ATTEMPT, THROUGH LEGISLATIVE AND JUDICIAL INTERPRETATION TO TREAT LOCAL GOVERNMENTS AS THOUGH THEY WERE SOME SORT OF BUSINESS. IT PRESUMES THAT LOCALITIES CAN RAISE THEIR PRICES TO DEAL WITH THE JUDGMENT -- PRICES, IN THIS CASE, BEING LOCAL TAXES -- AND THAT'S NOT ALWAYS THE CASE, BECAUSE OF MANY REQUIREMENTS AND CEILINGS OF STATE LAW. OR THAT THEY CAN WITHDRAW THEIR SERVICES, LIKE A BUSINESS COULD DO -- WHICH THEY ALSO CANNOT DO, BECAUSE THEIR SERVICE LEVELS ARE MANDATED BY STATE LAW; OR THAT THEY CAN GO BANKRUPT, WHICH THEY CANNOT DO.

WE FACE ESSENTIALLY THE SAME PROBLEMS IN THE POLLUTION ARENA. IN HAVING TO SCRAMBLE FOR ANY KIND OF INSURANCE PROTECTION THEY CAN FIND, MANY TOWNS AND TOWNSHIPS HAVE TO SETTLE FOR LIMITS ON

COVERAGE -- HIGHER DEDUCTABLES, LOWER PROTECTION LEVELS, AND EXCLUSIONS OF CERTAIN EXPOSURES, MOST OFTEN POLLUTION EXPOSURES.

THIS EXCLUSION OF POLLUTION COVERAGE IS OF PARTICULAR CONCERN TO THOSE MUNICIPALITIES WITH LANDFILLS. THE ENORMITY OF THE IMPENDING FINANCIAL DANGER BECOMES APPARENT WHEN YOU CONSIDER THE TREMENDOUS NUMBER OF OPERATING AND PREVIOUSLY FUNCTIONING LANDFILLS ACROSS THE COUNTRY. FEDERAL MANDATES HAVE FORCED US TO ACCEPT THIS LIABILITY IN PERPETUITY AND HAVE LEFT US NO TOOLS TO DEFEND OURSELVES: NO RESOURCES TO FALL BACK ON EXCEPT OUR SEVERELY STRAINED PROPERTY TAX BASE.

WE DO HAVE SEVERAL OTHER SUGGESTIONS THAT THE COMMITTEE MIGHT WANT TO CONSIDER, MR. CHAIRMAN. THE FEDERAL GOVERNMENT MIGHT PROVIDE INDEMNIFICATION IN THE WAY E.P.A. ALREADY DOES FOR FOR ITS CONTRACTORS AT WASTE SITES. THEIR CONTRACTORS ARE INDEMNIFIED, BUT LOCAL GOVERNMENTS ARE NOT; AND INSURANCE COMPANIES HAVE INDICATED THEY CANNOT SEE A SITUATION IN WHICH THEY WILL REENTER THE ENVIRONMENTAL MARKET, BECAUSE EVEN SANITARY LANDFILLS POTENTIALLY ARE HAZARDOUS WASTE SITES -- SINCE HOUSEHOLD GARBAGE CONTAINS ALL SORTS OF TOXIC MATERIALS.

ANOTHER OPTION WE EXPLORED AT OUR LIABILITY SUMMIT -- AND SOMETHING WE FEEL IS CRUCIAL TO THOSE OF US WHO ARE TRYING OUR BEST TO DO A GOOD JOB UNDER THESE EXTREMELY DIFFICULT CIRCUMSTANCES -- IS TO ESTABLISH FEDERAL STANDARDS OF COMPLIANCE IN THE ENVIRONMENTAL AREA, SO THAT A LOCAL GOVERNMENT WILL KNOW THAT IF IT DOES EVERYTHING THE STANDARDS REQUIRE IT WILL HAVE

COMPLETE, OR AT LEAST LIMITED, PROTECTION. WITHOUT SUCH STANDARDS, NO MATTER WHAT WE DO -- NO MATTER HOW MUCH MONEY WE SPEND -- NO MATTER WHICH HIGH-PRICED CONSULTANTS WE ENGAGE OR HIGH-TECHNOLOGY EQUIPMENT WE PURCHASE -- NOTHING WILL REDUCE OUR LIABILITY UNDER THE ENVIRONMENTAL LAWS.

THE PRESSING, IMMEDIATE NEED FROM THE PERSPECTIVE OF THE NATION'S TOWNS AND TOWNSHIPS IS FOR CONSIDERATION OF FEDERAL INTERVENTION THAT WILL SOLVE THE LIABILITY PROBLEM AT LEAST FOR THE SHORT TERM, BRIDGING THE GAP WHICH EXISTS BETWEEN OUR PRESENT EXPOSURE AND OUR ABILITY TO PAY ENORMOUSLY INFLATED INSURANCE PREMIUMS. WE ALSO NEED CRISIS INTERVENTION BEFORE LOCALITIES ARE FORCED TO "GO BARE."

AS YOU KNOW, MR. CHAIRMAN, PRECEDENT EXISTS IN FEDERAL LAW FOR THE GOVERNMENT TO ACT AS INSURER OF LAST RESORT; WE FEEL STRONGLY THAT THAT OPTION DESERVES ANOTHER LOOK. AN OPPORTUNITY EXISTS NOW TO LEARN FROM THE MISTAKES OF THE FLOOD AND RIOT PROGRAMS OFFERED THROUGH H.U.D. AND THE CROP INSURANCE PROGRAMS OFFERED THROUGH U.S.D.A., AND TO DEVELOP DETAILS OF A PROPOSAL WHICH WOULD BE AN EFFECTIVE TOOL IN THIS ARENA. CLEARLY, PARTICULARLY UNDER THE PRESENT ECONOMIC SITUATION, SUCH AN INITIATIVE WOULD HAVE TO BE AS SELF-SUPPORTING AS POSSIBLE.

THERE ARE ALSO SOME SUGGESTIONS COMING FROM THE STATE LEVEL WHICH THE COMMITTEE MIGHT FIND VALUABLE. COMMON ELEMENTS APPEAR IN SEVERAL PROPOSALS OF WHICH WE ARE AWARE -- THESE PARTICULAR EXAMPLES COME FROM THE EXPERIENCE OF THE STATES OF PENNSYLVANIA, OHIO AND MICHIGAN. THEY ALL CONTAIN OR ARE CONSIDERING PROPOSALS TO:

-- ABOLISH OR AMEND THE DOCTRINE OF JOINT AND SEVERAL LIABILITY FOR GOVERNMENTAL UNITS;

-- EXEMPT GOVERNMENTAL OFFICERS OR EMPLOYEES FROM PERSONAL LIABILITY WHILE ENGAGED IN THE PERFORMANCE OF THEIR DUTIES;

-- MODIFY THE COLLATERAL SOURCE RULE i.e., A PROCEDURE BY WHICH THE COURT REDUCES THE JUDGMENT BY AN AMOUNT EQUAL TO PAYMENTS RECEIVED FROM GOVERNMENT BENEFITS, NO-FAULT INSURANCE AND OTHER SOURCES;

-- CAP DAMAGES AWARDED FOR PAIN AND SUFFERING

-- PROVIDE FOR RECOVERY BY THE PREVAILING PARTY OF COSTS AND REASONABLE ATTORNEYS FEES, IF THE COURT FINDS THE ACTION TO HAVE BEEN FRIVOLOUS OR SOLELY FOR HARASSMENT.

ALSO UNDER CONSIDERATION CURRENTLY -- IN THE STATE OF MICHIGAN -- IS THE PRINCIPLE OF PROPORTIONAL LIABILITY: DETERMINATION OF A RELATIVE DEGREE OF FAULT AMONG ALL PARTIES THROUGH A FORMULA APPLIED BY THE COURT. IN THIS CASE, ALTHOUGH A LOCAL UNIT WOULD ALWAYS BE RESPONSIBLE FOR ITS PERCENTAGE OF FAULT, IT WOULD BE PROTECTED FROM THOSE WHO CONSIDER LOCAL GOVERNMENTS TO HAVE THE PROVERBIAL -- AND MYTHICAL -- "DEEP POCKETS," AND THEREFORE FAIR GAME AND TEMPTING TARGETS.

LET ME REITERATE, MR. CHAIRMAN, THAT ALTHOUGH WE SEE STATE LEGISLATURES MAKING SOME PROGRESS, THE PROBLEM WITH ACTIONS BEING BROUGHT UNDER SECTION 1983, AND IN THE POLLUTION ARENA, REMAIN -- AND THEY WILL HAVE TO BE ADDRESSED AT THE FEDERAL LEVEL. PLEASE

REMEMBER THAT MUNICIPALITIES ARE UNDER UNIQUE PRESSURE AS A RESULT OF THIS CRISIS AND THAT WE ARE FACING AN EMERGENCY SITUATIONS EVERY DAY. WE WOULD LIKE VERY MUCH TO WORK WITH YOU, YOUR STAFF AND MEMBERS OF THE COMMITTEE TO DEVELOP DETAILS OF A QUICK AND EFFECTIVE RESPONSE TO THIS NATIONAL CRISIS.

GREATER WASHINGTON SOCIETY
OF ASSOCIATION EXECUTIVES

May 12, 1988

The Honorable Howell Heflin
Chairman
c/o Mr. Tom Young
Judiciary Subcommittee on Courts
and Administrative Practices
223 Senate Hart Building
Washington, DC 20510

Dear Senator Heflin:

Please accept this letter as testimony concerning your scheduled hearings on the Volunteer Protection Act (S.929) which you have on your agenda in the coming weeks.

The Greater Washington Society of Association Executives represents the 4,200+ national and international associations which are headquartered in the Greater Washington area. Having 30 percent plus of the nation's national and international associations headquartered in our area provides us with a good perspective on the needs of our associations, especially in the areas of obtaining liability insurance to protect their volunteer leaders. Our profession's biggest problem is that, as a whole, the amount of total premium we pay is a drop in the bucket compared to other types of liability insurance. Therefore, insurance companies don't devote the time and effort to analyze our true risk. Additionally, often times these companies equate an association's risk with the risk of member companies or professions; in the vast majority of cases, the association's risk is much less. In a recent detailed analysis of a random selection of associations, GWSAE found that 90% had never had legal action against them in their entire history.

As you know, rates for directors and officers liability insurance have skyrocketed over the past several years and even though the market appears to be softening somewhat now, this is not to say that rates will not take another move upward in the coming years. As an example of this, GWSAE's own director and officers liability insurance four years ago was $400; last year it was $3,200, and for the coming year it will be $2,800. In fact, based on industry statistics, we feel that in all probability rates will continue to rise because more Risk Retention Groups (RRG) are forming in many industries, leaving the rest of us thrown in with high risk organizations who do not qualify for RRG participation.

Although GWSAE can financially withstand these outrageous premiums, (for less coverage than before) unfortunately there are many associations with meager budgets and small staffs who will find these kind of rates unacceptable. Indeed, many of them are going "naked," choosing to risk no coverage as opposed to having to pay such exorbitant premiums. Although various options in the forms of risk retention groups and risk purchasing groups are just becoming known, there needs to be more protection for volunteer leaders.

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Springtime in the Park • May 25, 1989 Annual Meeting • June 15, 1989

GWSAE has followed very carefully the actions which many of the states have taken in the volunteer protection legislation area. GWSAE applauds the efforts of the many states who have passed some sort of volunteer protection legislation. However, when one looks across the spectrum of states which passed such legislation it is impossible not to see that the protection afforded by each state varies from state to state. The problem with leaving this type of legislation to be passed by the states is that it is not consistent. In some states, state laws covers board of directors only, some cover board and staff only, and some cover all volunteers.

Unless there is a uniform volunteer protection act which covers boards of directors, staff, and other volunteers within the association such as committee chairman and committee members, it will be very difficult for associations to continue to attract the leadership that is so necessary for us to continue to provide the services which we do. Unfortunately, many volunteer leaders are giving up the mantle of leadership because they are afraid of exposing themselves to personal liability.

In short, GWSAE would strongly recommend that the Congress pass a uniform volunteer protection act which affords protection to all volunteer members whether they be a member of the board of directors or simply a member doing his or her duty on behalf of the association.

GWSAE would be pleased to provide verbal testimony to the Subcommittee should you desire or provide you with any other input that you feel appropriate. Our thanks to the entire Subcommittee for listening.

On behalf of the Greater Washington
Society of Association Executives

John Lisack Jr
John Lisack, Jr, CAE
Chairman of the Board

Stephen W. Carey
Stephen W. Carey, PhD, CAE
Executive Vice President

cc: Senator John Melcher (D-MT)

Representative John Porter (R-IL)

R. William Taylor, CAE
President ASAE

Vince Robison
Chairman of the Board ASAE

Richard Lesher
President, US Chamber of Commerce

Metro Health Services Federal Credit Union
1910 South 44th Street • P.O. Box 6263 • Omaha, Nebraska 68106
(402) 551-3052

May 16, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on Courts
and Administrative Practive
223 Senate Hart Office Building
Washington, D.C. 20510

Dear Mr. Young:

As president of Metro Health Services Federal Credit Union, I would like to voice support for S. 929, the Volunteer Protection Act.

In today's environment, the fear of lawsuits and rising costs for insurance coverages often makes people think twice before getting involved in any activities. As a credit union, we operate under the policies made by volunteers who serve as our board of directors. These volunteers should be able to serve as directors without the stress and worry of personal liability of potential court battle over the issues of judgement in the operations of a financial institution.

Credit unions have grown substantially in past years. They have grown because there was a need, a need by the people for an alternative to banks, savings and loans and other financial institutions. Credit unions, democratically controlled with volunteer boards and committees, have filled that need. A common bond of occupation, association and community are the basis for these financial cooperatives.

Each year, at an annual meeting, representatives are elected from the membership to serve on the board of directors and committees. Those representatives, serving as volunteers, collectively guide the credit union and its services into the future. Those volunteers continually seek help in solving problems, considering new services and overall direction of the credit union.

The spirit and cooperative nature of credit unions, the fact that the volunteers have been abundant in the past, are definite reasons for success. But, during the past ten years, many credit unions have found a shortage of willing volunteers. That shortage is due to fear and potential liability involved in directing a financial institution.

Good faith efforts to comply with the ever increasing complexity of laws and regulations are not sufficient to protect the credit union volunteer from liability. Unwillingness to accept this exposure has prompted the directors of several small credit unions in our state to seek mergers into larger institutions.

The democratic structure of credit unions, the future of credit unions, is jeopardized until legislation is passed protecting the volunteer.

Sincerely,

Elaine M. Dyer

Elaine M. Dyer
President

"For People Who Care For People"

Nebraska Credit Union League & Affiliates

Nebraska Credit Union League, Inc.
Nebraska Credit Union League Services Corp.
Nebraska Corporate Central Federal Credit Union

May 16, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on Courts
and Administrative Practice
223 Senate Hart Office Building
Washington, D.C. 20510

Dear Mr. Young,

As a representative for credit unions in the state of Nebraska, I would like to voice support for S. 929, the Volunteer Protection Act.

In today's environment, the fear of lawsuits and rising costs for insurance coverages often make people think twice before getting involved in any activities. We read about people dying while others watch because of the fear of getting involved. I have heard attorneys say that there are no "winners" in many court battles. How can one be considered a winner when having the financial burden and trauma of a court battle over the issues of judgement in operating a financial institution.

Credit unions have grown substantially in past years. They have grown because there is a need, a need by the people for an alternative to banks, savings and loans and other financial institutions. The credit union alternative, democratically controlled with a volunteer board and committees has filled that need. A common bond of occupation, association and community are the basis for these financial cooperatives.

Each year, at an annual meeting, representatives are elected from the membership to serve on the board and committee structures. Those representatives, serving in a volunteer capacity, collectively guide the credit union and it's services into the future. These volunteers continually seek help in solving problems, considering new services and overall direction of the credit union.

The spirit and cooperative nature of credit unions, the fact that the volunteers have been abundant in the past, are definite reasons for success. But during the past ten years, many credit unions have found a shortage of willing volunteers. That shortage is due to fear and potential liability involved in directing a financial institution. The fear is found among all classes of people.

NCUL Building 4315 Frances Street Omaha, NE 68105
(402) 558-3135 (800) 642-8402

Good faith efforts to comply with the ever increasing complexity of laws and regulations are not sufficient to protect the credit union volunteer from liability. Unwillingness to accept this exposure has prompted the directors of several small credit unions in our state to seek mergers into larger institutions.

The democratic structure of credit unions, the future of credit unions, is jeopardized until legislation is passed protecting the volunteer.

Sincerely,

Steve Edgerton
President

OMAHA FEDERAL CREDIT UNION
120 APPLEWOOD MALL / THE CENTER MALL
42nd & CENTER, OMAHA, NEBRASKA 68105-2982
402-341-8017

May 16, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on Courts
and Administrative Practice
223 Senate Hart Office Building
Washington, D. C. 20510

Dear Mr. Young,

Omaha Federal Credit Union would like to voice support for S. 929, the Volunteer Protection Act.

Representatives are elected from our membership to serve on our Board of Directors and our committees. Those representatives, serving in a volunteer capacity, collectively guide Omaha Federal Credit Union.

The spirit and cooperative nature of credit unions, the fact that the volunteers have been much more abundant in the past, are definitely an important reasons for our success. During recent years many credit unions have had a shortage of volunteers. That shortage is in part due to fear and potential liability involved in directing a financial institution, no matter what their background is.

Several of our smaller credit unions in Nebraska have sought mergers into larger institutions because they are not willing to accept this exposure. Good faith efforts to comply with the complex laws and regulations are insufficient for protecting the credit union volunteer from liability.

Our credit unions are democratic organizations, we do not want our future jeopardized for the lack of volunteers. Legislation protecting our volunteers would certainly aid us in retaining these important, cooperative and democratic institutions which are the credit unions.

Sincerely,

Joan L. Dixon
President

Omaha Police Federal Credit Union

4315 Frances • Suite 200 • Omaha, Nebraska 68105 • (402) 556-8820

May 16, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on Courts
and Administrative Practice
223 Senate Hart Office Building
Washington, D.C. 20510

Dear Mr. Young,

As Manager of a credit union in the state of Nebraska, I would like to voice support for S. 929, the Volunteer Protection Act.

In today's environment, the fear of lawsuits and rising costs for insurance coverages often make people think twice before getting involved in any activities. How can one be comfortable with their committment while having the possible financial burden and trauma of a court battle over the issues of judgement in operating a financial institution.

Each year, at an annual meeting, representatives are elected from the membership to serve on the board and committee structures. Those representatives, serving in a volunteer capacity, collectively guide the credit union and it's services into the future. These volunteers continually seek help in solving problems, considering new services and overall direction of the credit union.

Credit unions have grown substantially in past years. They have grown because there is a need, a need by the people for an alternative to banks, savings and loans and other financial institutions. The credit union alternative, democratically controlled with a volunteer board and committees has filled that need. A common bond of occupation, association and community are the basis for these financial cooperatives.

The spirit and cooperative nature of credit unions, the fact that the volunteers have been abundant in the past, are definite reasons for success. But during the past ten years, many credit unions have found a shortage of willing volunteers. That shortage is due to fear and potential liability involved in directing a financial institution. The fear is found among all classes of people.

Good faith efforts to comply with the ever increasing complexity of laws and regulations are not sufficient to protect the credit union volunteer from liability. Unwillingness to accept this exposure has prompted the directors of several small credit unions in our state to seek mergers into larger institutions.

The democratic structure of credit unions, the future of credit unions, is jeopardized until legislation is passed protecting the volunteer.

Sincerely,

Joleen Miller
Manager/Treasurer

JM/jlp

NEIGHBOR FOR NEIGHBOR, INC. ☐ 1506 East 46th St. North ☐ Tulsa, Oklahoma 74126

May 17, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on
Courts and Administrative Practice
223 Senate Hart Building
Washington, D.C. 20510

Dear Mr. Young,

Neighbor For Neighbor Anti-Poverty Movement in Tulsa, Oklahoma depends almost entirely on volunteers to run our many faceted program which includes a free Medical, Dental and Optometric Clinic, Family Financial Counseling, assistance with food and medication and social justice advocacy.

It has become increasingly difficult to get professional medical, dental and optometric people involved because of the fear of lawsuits and escalating liability insurance costs. We find that the private sector will not respond to the needs of the poor in an operation such as ours under the present legal conditions. We could get retired professionals to give time if they were free of the cost of liability insurance.

We strongly support and urge passage of S.929, the Volunteer Protection Act. Please submit this letter as written testimony. Also see enclosure.

Thank you.

Sincerely,

Carol A. Falletti

Carol A. Falletti, Director
Neighbor For Neighbor Free Clinic

SANDY A. FUREY, M.D., P.C.
JOHN DIAKIW, M.D.
Internal Medicine and Cardiology
Physician's Building, Moses Taylor Hospital
748 Quincy Avenue
Scranton, PA 18510

Telephone: (717) 347-9600

May 17, 1988

Mr. Tom Young
Counsel, Senate Judiciary Subcommittee on Courts and
Administrative Practice
223 Senate Hart Building
Washington, D. C. 20510

Re: Senate Bill S.929
(Volunteer Protection Act)

Dear Mr. Young:

I am writing to you in regards to the above Senate Bill which I feel may greatly benefit many of the indigent, elderly and underprivileged people of our Nation. There are many physicians today who have opted for early retirement from the active practice of medicine for a multitude of reasons. Many of these physicians would like to, in a part-time manner, continue on with the practice of medicine by volunteering their services to the needy without compensation. However, they are prevented from doing this because of the issue of malpractice that they must face and the high cost of maintaining malpractice insurance in todays environment. These physicians , I am sure, would provide their services without compensation, providing they rendered acceptable and appropriate care. This would be very similar to the Good Samaritan Acts that are present in many states in which rendering care at the scene of an auto accident or an emergency would provide that individual with immunity from litigation providing the care was reasonable.

Many of todays early retiring physicians go from a very active life in which they may have engaged in anywhere from 8 to 10 or more hours of busy practice to a life in which they may have little intellectual and professional stimulation. These physicians I am sure would very much welcome the opportunity to continue in a part-time, not compensated, volunteer basis to the needy, if this could be made possible without the high expense of malpractice insurance or the significant threat of litigation. I also feel that this service may not only be rendered by the medical profession but there are other retired people in other professions who may wish also to continue to render their professional services on a volunteer basis to the needy providing they did not have the expense or worry of the litigation threat.

Re: Senate Bill S.929

With the mounting increasing cost of health care in this country today, this may be one small means of reducing the expense and also providing the health services to that segment of the population to whom it is most denied.

The idea of immunity for volunteering physicians was one of the recommendations of the "Task Force on Aging of the Moses Taylor Hospital." of Scranton Penna. The task force was a multidisciplinary group whose main purpose was to provide coordinated care for the elderly in our area. Your thoughtful and necessary Senate Bill S.929 may help the aging and indigent population of this Nation by utilizing what would be dormant medical talent wasted because of the malpractice problem.

Respectfully,

Sandy A. Furey, M.D.
Director of Medical Services
Moses Taylor Hospital
Scranton, Pennsylvania

SAF/dam

HEAL
Human Ecology Action League, Inc.
P.O. Box 66637
Chicago, IL 60666
(312) 665-6575

May 18, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on Courts
& Administrative Practice
223 Senate Hart Building
Washington, D. C. 20510

Re: S929
Volunteer Protection Act

Dear Mr. Young:

Senator John Melcher asked our organization to submit testimony regarding S929. The Human Ecology Action League is honored to submit testimony and to go on record in support of S929.

We are a self-help group providing information to people with chemical hypersensitivities and pesticide poisoning. With 121 chapters and affiliated support groups across the country we are the only organization which provides these services. We have been in operation for 11 years and are funded by contributions and an annual membership fee.

With a budget under $100,000 we are one of the smaller nationwide 501(c)3 corporations. You would hardly expect the personal liability of directors and officers to be an issue in such a small organization. But it has been. Our ability to recruit capable leadership for our Board of Directors has been severely limited because of the current laws covering the personal liability of directors in volunteer organizations.

Nearly three years ago our Board was advised to terminate a contract with the publisher of our quarterly journal. The publisher had failed, and effectively refused, to submit a financial accounting of advertising revenues received. This money was held in a trustee account to be used for publishing expenses. The publisher sued the corporation for breach of contract and named some of the Board members individually.

Several of our most dedicated workers on the Board were unsophisticated in such matters and panicked. Two sweet ladies, one of whom was a retired maiden lady, feared losing their homes. Naturally they resigned. The publisher had accomplished exactly what he wanted to do: create chaos on our Board. He used the threat of the law against well-meaning but naive volunteers.

The organization countersued to recover the funds. We subsequently found out they had been substantially depleted with IOU's for groceries and personal expenses. The publisher's case against us was dismissed in January of 1987 and he filed bankruptcy in an attempt to avoid returning the funds.

He has repeatedly filed onerous briefs with the court questioning the integrity and capability of the past Board and threatening to hold future Boards liable for his mental anguish during litigation. He has even blamed the organization for his own failure in business and subsequent bankruptcy. Obviously the legal exposure for Board members in this case has been miniscule if not non-existant. But his threats have been as effective as if there were some basis because there is no differentiation under the law for volunteer directors versus directors of for-profit corporations.

New Board members continue to be concerned about their personal liability and will be, no matter how unrealistic the concern, until a law like the Volunteer Protection Act is passed. After seeing some of the publisher's letters a new Board member has also resigned. He is a minister whose finances were depleted during his struggle with the illness. His fear may have been unrealistically based but that fear was very real in his mind.

Somehow we have kept the organization going. But we have wasted valuable time because one angry man tried to destroy our organization using a law inappropriately as a weapon against dedicated volunteers.

Since there is no hope of recovering most of the money we have tried to settle our countersuit. Each time the publisher agrees verbally to a settlement he sends off a barrage of poison pen letters to the court or our attorney and then reneges. And each time some of our Board members get squeemish and worry if they could be jeopardizing their family's assets. So our horror story continues.

Our experience has been unproductive and exhausting. Surely it is the exception. And yet if it could happen in such a small organization it could happen in a larger one. You have the opportunity to bring this senseless kind of bullying to an end.

With the ever-mounting cry to balance the federal budget, it is even more important that the non-profit sector assume more responsibility for the delivery of social services. Volunteerism and philanthropy are the backbone of this country. Without them our quality of life would be greatly diminished.

Volunteers are not paid professionals. They give willingly of their time because of their dedication to a project. Their reward should not be fear of losing their only assets. Unless volunteers receive legal protection in our overly litigous society, we will lose the services of the most capable. And in the end each of us will feel the loss.

The Human Ecology Action League strongly supports the passage of S929, the Volunteer Protection Act.

Very truly yours,

Marianne W. Sams

Marianne W. Sams
Vice President & Treasurer

MWS/mm

KEITH ALTIZER AND COMPANY, P.A.
Certified Public Accountants
MEMBERS
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
FLORIDA INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

400 SOUTH MAITLAND AVENUE
MAITLAND, FLORIDA 32751
305/628-0177

May 18, 1988

Mr. Tom Young
Counsel
Senate Judiciary Subcommittee on Rules and
Administrative Practice
223 Senate Hart Building
Washington, DC 20510

Re: S929 Volunteer Protection Act

Dear Mr. Young:

I am writing to you on behalf of a not-for-profit organization of which I am a board member and currently serve as Treasurer.

The organization is WeCare, Inc. of Orlando, Florida. WeCare, Inc. is a 24-hour, 7 day a week suicide prevention and crisis intervention organization. We depend heavily upon volunteers in all facets of our operation. All of our board members and many of our staff volunteer their time, money and effort. The people who answer our phone lines and the people who are involved in crisis intervention outreach, and face-to-face events are all trained volunteers.

To date, we have lost some high profile individuals as board members due to the fact we have been unable to locate a company that carries affordable liability insurance to protect our board members from potential legal action.

I am writing to you on behalf of all the board members, staff, and volunteers of WeCare, Inc. to applaud the efforts of this subcommittee to limit volunteer liability on a Federal level, and to extend our full support of Senate Bill S929.

If there is anything we, as an organization or as individuals, can do to aid in the process of making Senate Bill S929 a law, please notify me.

Yours very truly,

Annette Pursley

Annette Pursley
Tax Manager

AP/rc

Association of Governing Boards of Universities & Colleges
One Dupont Circle Suite 400 Washington, D.C. 20036 202/296-8400

May 19, 1988

The Honorable Howell Heflin
Chairman
Subcommittee on Courts and
Administrative Practice
United States Senate
223 Hart Senate Office Building
Washington, D.C. 20510-6275

Dear Mr. Chairman:

On behalf of the Association of Governing Boards of Universities and Colleges (AGB) and the American Council on Education (ACE), I am pleased to submit these comments supporting S. 929, the Volunteer Protection Act of 1987. I commend you for holding a hearing on this important legislative initiative and ask that this letter be included in the hearing record.

AGB is a nonprofit educational organization of governing, coordinating, and advisory boards of postsecondary education that serves approximately 32,000 trustees, regents, and chief executives of nearly 1,700 colleges and universities. ACE is the major higher education association representing 1600 colleges and universities.

Nationally, there are 48,000 volunteer trustees who serve on 2,200 college and university governing boards. These men and women are prominent members of their communities, who willingly volunteer their time and energy to serve as the ultimate authority in the governance of the nation's higher education institutions. Colleges and universities seek talented and successful individuals to guide colleges both fiscally and academically into the future.

The ability of colleges and universities to attract such gifted men and women is severely threatened, however, by numerous lawsuits and the lack of availability or exorbitant cost—of liability insurance. Members of the community are concerned about exposing their personal assets by serving on boards of colleges and universities. This threat has had a chilling effect on higher education institutions' ability to recruit new members to their boards and has forced some trustees to resign their positions.

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Jacqueline E. Woods

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Gateway Technical Institute
Ripon College (1983-86)
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Johnetta R. Haley
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J. Lloyd Huck
Pennsylvania State University

David M. Lascell
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Andrew J. McKenna
University of Notre Dame

Alan J. Pifer
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Mount Vernon College
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Robert L. Lewis
Cuyahoga Community
College District (1962-80)
Lake Erie College (1981-83)

Samuel J. Silberman
Fairleigh Dickinson Univ. (1967-87)

S. 929 will address trustees' concerns by encouraging states to enact laws granting civil liability immunity to individual volunteers for any liability action related to their unpaid service to any organization incorporated under IRS Section 501(c), which includes colleges and universities. The laws would not extend to volunteers whose behavior is willful or wanton or outside the scope of their duties to the organization. The institution itself could still be sued.

AGB and ACE believe that S. 929 represents a reasonable and necessary federal response to this real threat to the nation's volunteer college and university trustees. I urge the Subcommittee to support S. 929 and to push for its speedy consideration in full Committee. AGB and ACE are ready to work with you on this important legislation, which will help protect college and university trustees and the institutions they serve.

Sincerely,

Robert L. Gale
President

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS
P.O. Box 3769 WASHINGTON, DC 20007
(703) 522-4770

May 19, 1988

The Honorable Howell Heflin
Chairman
Subcommittee on Courts
and Administrative Practice
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Heflin:

I am writing you on behalf of the National Association of Federal Credit Unions (NAFCU) regarding the proposed Volunteer Protection Act, S. 929. It is NAFCU's understanding that the Subcommittee on Courts and Administrative Practice has scheduled a hearing on this legislation for Friday, May 20, at 9:30 a.m. Since all federal credit unions rely on volunteers to oversee credit union operations, the issue of the civil liability of volunteers is especially important to the credit union community.

Volunteers have historically been a critical factor in the growth of the credit union community. In the past, many credit unions were staffed exclusively by volunteers. Even today, while many credit unions employ salaried professionals to manage a credit union's day-to-day operations, volunteers continue to play an important role in the credit union community.

Indeed, volunteers are involved in nearly every aspect of the operation of a credit union. A credit union is governed by a board of directors who, by law, serve without compensation. These volunteer board members set their credit union's policy, select its managerial staff, and guarantee that the operation of the credit union is efficient and in the best interest of its members. In addition, volunteers also serve on various committees which oversee different aspects of a credit union's operations, such as the supervisory and credit committees. As of December 1987, there were more than 200,000 volunteers in the credit union community.

If enacted into law, the Volunteer Protection Act would have the effect of protecting credit union volunteers from civil suits for acts done in good faith and which do not involve willful or wanton misconduct. If such a statute is not enacted, NAFCU is concerned that federal credit unions will be adversely affected through the withdrawal of volunteers from boards of directors and service in other capacities because of a perception that they, by giving freely of their time and talent, are placing their personal assets at risk in the event of liability actions against the credit unions they serve. Therefore, NAFCU wholeheartedly supports the enactment of the Volunteer Protection Act.

NAFCU commends Senator Melcher and the Subcommittee's efforts to resolve this very important problem and appreciates the efforts of Congressman Porter in advocating the passage of this legislation in the House.

On behalf of NAFCU, I thank you for your cooperation in this regard. If you have any questions concerning this issue or would like to further discuss our concerns, please do not hesitate to contact NAFCU's Vice President for Government Affairs, Bill Donovan, at 522-4770.

Sincerely,

Robert A. Hess
Chairman

American Chemical Society

OFFICE OF THE
PRESIDENT
Gordon L. Nelson
President-Elect, 1987
President, 1988
Immediate Past President, 1989

1155 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
Phone (202) 872-4600

May 20, 1988

The Honorable Howell T. Heflin
Chairman
Subcommittee on Courts and Administrative
Practices
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The American Chemical Society (ACS) wishes to express its views on the "Volunteer Protection Act of 1987," S.929, that is being reviewed by the Subcommittee at today's hearing. This legislation, which seeks to encourage the States to enact laws that would grant immunity from civil liability to volunteers, is vitally important since the protection of volunteers from personal liability is a necessity for the continuation of many community service programs throughout the country. Without volunteers, many of these services would be severely reduced. The ACS wishes to applaud Senator Melcher and Congressman Porter for the introduction of S.929/H.R.911.

The ACS, with a membership of over 137,000 chemists and chemical engineers is a congressionally chartered, scientific and educational organization devoted to the advancement of chemistry. The Society, like many other nonprofit organizations, is highly dependent upon the volunteer services of its members. Each year nearly 3,000 ACS members devote their time through service as officers in the Society's 182 local sections and 32 divisions and as members of the Board of Directors and the national Council. Other ACS members serve on Society committees and editorial boards.

Among these volunteer groups, the Society's local sections are particularly active through the many projects that they carry out within their communities. Volunteer activities are carried out by local sections in all fifty states. These activities range from judging at science fairs to assisting area high schools in identifying unlabeled containers of chemicals in their science labs. ACS local sections have also helped their local environmental and civic groups organize hazardous waste collection or "amnesty" days, which allow area residents to bring household wastes, such as used motor oils, unused paints and cleaning solutions, insecticides, and pesticides, to a designated collection site for proper disposal.

Passage of the Volunteer Protection Act is especially critical to the implementation of SARA Title III, the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA requires each state to develop local chemical emergency preparedness programs, and gather and disseminate information on hazardous chemicals in the community. Volunteers, including ACS members, will be depended upon to provide scientific and technical advice that will be needed by these groups for emergency planning, interpretation of data, and communication of risk.

In recent years, the ACS local sections and members, like many other volunteers from nonprofit organizations, have been very concerned about the possibility of being named in liability suits when participating in community service projects. In several instances, ACS local section projects have been limited or discontinued because member volunteers are concerned about the potential of being sued. Concerns over liability issues will increase as ACS members reach out to address broader issues of concern in their communities, such as The Emergency Planning and Community Right-to-Know law. It is unfortunate when concerned scientists, doctors, teachers, parents, or students discontinue their volunteer service for this reason.

Our nation was founded on the premise of neighbor helping neighbor, and our founding fathers volunteered their time and energies to establish a strong democratic society of involved citizens. This spirit exists today in many communities across our country, as well as in most service organizations that are governed and run by volunteers. Almost 50 percent of the adults in the U.S. volunteer at least two hours per week in work associated with nonprofit organizations. It would be difficult for our nation to function without these volunteers--a loss to our society that we cannot afford.

Many of the contributions made to the scientific community and to the general public by the American Chemical Society are achieved through the volunteer service of our members. S.929/H.R.911 will enable ACS members and all individuals who participate in volunteer service activities, to continue their work without the fear of being involved in liability suits. For this reason, the American Chemical Society strongly endorses the "Volunteer Protection Act," and recommends passage of S.929/H.R.911 by Congress.

Sincerely yours,

Gordon L Nelson

Gordon L. Nelson

cc: Members, Subcommittee on Courts
and Administrative Practices
The Honorable John Melcher

THE ASSOCIATION OF
TRIAL LAWYERS OF AMERICA
1050 31ST STREET, N.W. WASHINGTON, D.C. 20007 202/965-3500

ALAN A. PARKER
DIRECTOR OF PUBLIC AFFAIRS

The Honorable Howell Heflin
Chairman, Subcommittee on Courts and
Administrative Practice
U.S. Senate Committee on the Judiciary
Washington, D.C. 20510

May 20, 1988

Dear Senator Helfin,

Thank you for extending to the Association of Trial Lawyers of America an opportunity to express our views on S. 929, the Volunteer Protection Act of 1987. We have considered the bill closely and though its proponents are well meaning, we are convinced its enactment would be unfortunate. It would establish a misguided and dangerous public policy based on several seriously flawed premises.

Please do not misread our position. ATLA is strongly supportive of volunteers and volunteer services -- many of our 70,000 members are leading volunteers who offer their time and their service to nonprofit or private organizations in their communities and to civic associations and government entities. The willingness to give of ourselves is a centuries old American tradition which we believe government and law may legitimately foster and protect. We are convinced, however, that there is insufficient data (indeed, almost no reliable data that we have seen) which demonstrates that Americans have stopped volunteering their services. If civic associations or schools or other nonprofit organizations are closing down or suffering because of a lack of volunteers, we, at least, are not observing that phenomenon in our communities. Before the Congress acts to strip our citizens of common law rights or encourages the states to restrict those rights, it has a responsibility to demand and carefully evaluate reliable and quantified data that demonstrates that such a problem in fact exists and that it exists because of what the bill calls "a perception" by volunteers that they are putting "personal assets at risks" because of an increased threat of liability actions.

ATLA does not deny that there has been an unconscionable explosion in the cost of liability insurance for many of these organizations; nor, certainly, do we deny that the inability of these groups to reasonably obtain coverage has adversely affected their work -- it has. In many cases, it has resulted in a reduction of services offered and provided. What is demonstrably clear, however, is that there simply is no relation between the civil justice system and the recent unaffordability/unavailability crisis engendered by the insurance industry. Time and again, in state after state where tort reform was considered by the legislature, insurers were unwilling to couple their support for restrictive tort legislation with a promise to reduce premiums if bills were enacted. Indeed, even to congressional committees with regard to other pending liability proposals, insurers have testified that enactment of restrictive tort bills will not result in lower rates or in a greater availability of coverage. If Congress believes that the passage of this bill will lower the rates for school boards or community associations or for nonprofits in general, then it should seek such an assurance from the insurance industry.

We are curious, too, that nowhere has there been data made available which shows clearly, simply and accurately the precise number of claims made against these volunteer associations and the number and amount of claims actually paid. Nor is there data before the Congress which shows the amount of claims paid as against the amount collected in premiums. From all parts of the country, though, we hear of fire departments or county fairs or day care centers or boys and girls clubs losing insurance coverage with absolutely no history of claims made against these groups. Surely, Congress and the American public should have available these basic facts before we legislate to drastically restrict the rights of citizens and seek to solve a problem that may not exist.

In the past sixty days, ten state attorneys general have filed lawsuits alleging that major insurers in this country, together with reinsurers and other elements within the insurance industry conspired to limit liability coverage. The lawsuits allege a conspiracy to reduce the coverage provided under the standard "commercial general liability" policy, which is the insurance purchased by most businesses, public agencies and nonprofit organizations. The attorneys general allege that insurers unlawfully exercised their power to guarantee that no company could offer broader coverage than the artificially reduced and cost inflated insurance they were supporting. We do not wish to pass judgment on the merits of these lawsuits in advance of an adjudication or settlement. We do, however, believe that the work of the attorneys general should send up an unmistakabale red flag -- something wholly unrelated to a so-called "lawsuit crisis" or "liability crisis" may be going on in this country and Congress can hardly afford to limit the rights of its constituents without a careful inquiry.

Astonishingly, the property/casualty insurance industry claimed large losses during the very period for which it ultimately showed a net gain of 50 to 75 billion dollars, the decade 1976-1985. (And net worth for the industry in 1986 was $92.4 billion, up 22.4% over 1985). The General Accounting Office testified during the Ninety Ninth Congress that it projected a net gain for property/casualty companies of more than 90 billion dollars for the years 1986-1990. What, then, if anything, does this tell us about a so-called explosion in the number of lawsuits and excessive claims? On the one hand, the insurance industry and others tell us we are a litigious nation in the midst of a "lawsuit crisis." On the other hand, the National Center for State Courts, having recently conducted a comprehensive study, concluded that "careful examination of current trial data....provides no evidence to support the existence of a national litigation explosion" in state court tort actions (or other civil actions).

Mr. Chairman, volunteers service our communities, our children, our schools. They are invaluable resources. We should do everything appropriate to preserve their contributions. We should not, however, at once give these decent, hard working, well meaning citizens responsibility for our children and our charities and then in the same breath announce that we are lowering their standard of responsible behavior. We agree with those who believe the civil justice system should never be abused but immunity for careless and negligent conduct is not an acceptable public policy.

Again, thank you for the opportunity to present our views.

Sincerely,

Alan A. Parker

Alan A. Parker

AAP:mp

Alan L. Fry, CLU, ChFC, CFP
Director Financial Planning Operations

1300 South Clinton Street
P.O. Box 1110
Fort Wayne, Indiana 46801
219 427 3993
Residence 219 637 5461

LINCOLN
NATIONAL
SALES CORPORATION

May 23, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on
Courts and Administrative Practice
223 Hart Building
Washington, D.C. 20515

Re: Volunteer Protection Act, H.R. 911, S. 929

Dear Mr. Young,

Mr. Young, I would like to indicate to you my support of this very important law to protect volunteers from civil lawsuits.

Our credit union, as well as others vitally depends on many hours of donated time from volunteers. They should be protected!

Sincerely,

Al Fry

Al Fry
Chairperson, Delinquency Committee
Insurance Employees Federal Credit Union

ALF/clw

cc: Volunteer Board of Directors
Volunteer Committee Members
Millie Cox, Indiana Credit Union League
Jim Countryman, President IEFCU

An affiliate of Lincoln National Corporation

GOSHEN RUBBER CO. FEDERAL CREDIT UNION
P.O. Box 517
Goshen, Indiana 46526

May 25, 1988

Mr. Tom Young, Counsel
Senate Judiciary Subcommittee on
Courts and Administrative Practice
223 Hart Building
Washington, D.C. 20515

Re: Volunteer Protection Act

Dear Mr. Young:

This is to advise you that the Board of Directors of the Goshen Rubber Co. Federal Credit Union supports the bill that was introduced in the United States House of Representatives to protect volunteers from personal liability in the event of a civil lawsuit against the orgainization they serve.

Please keep us informed on the status of this proposed law.

Very truly yours,

GOSHEN RUBBER CO., FEDERAL CREDIT UNION

Miriam Kauffman

Miriam Kauffman
Secretary, Board of Directors

PRISON
FELLOWSHIP
MINISTRIES
P.O. Box 17500
Washington, D.C. 20041-0500
(703) 478-0100

May 26, 1988

Honorable Howell Heflin
United States Senate
Committee on the Judiciary
Subcommittee on Courts and Administrative Practice
223 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Heflin:

Thank you for this opportunity to include in the record my comments on behalf of Prison Fellowship Ministries in support of S. 929, the "Volunteer Protection Act"

Prison Fellowship Ministries, founded in 1976, serves inmates, ex-prisoners and their families through in-prison teaching, pre-release counseling, and family assistance. During 1987, our organization provided services to more than 60,000 inmates and 57,000 family members. Through volunteer task forces in several states, we also assist public officials in addressing the serious problems of overcrowding and recidivism in the criminal justice system.

Volunteers are truly the backbone of our work, with over 24,000 on our active roster. Our nation is facing an unprecedented crisis in its criminal justice system -- and Prison Fellowship volunteers are one of the largest groups of citizens donating their time to help solve this problem.

As a former member of Congress, governor of Minnesota and president of Prison Fellowship Ministries, I understand the vital contributions volunteers can make. They are an important national resource.

At Prison Fellowship, we have noticed that many volunteers are increasingly concerned about offering their services, lest they be sued if something goes wrong. For example:

> Our recruitment of volunteers to transport children to visit their incarcerated mothers, in the New York City area, was hampered by liability concerns.

"A bruised reed he will not break . . . In faithfulness he will bring forth justice." Isaiah 42:3

Prospective members of our volunteer board of directors have voiced concerns over possible personal liability for their actions as board members.

Inmates who volunteer for community service projects administered by Prison Fellowship are faced with personal liability for on-site accidents.

Volunteers comprise the lifeblood of organizations, such as Prison Fellowship, which are addressing important social issues.

Sincerely yours,

Albert H. Quie
President

AQ/cr

The Power To Overcome

National Easter Seal Society
Office of Governmental Affairs

1350 New York Avenue N.W., Suite 415
Washington, D.C. 20005
202 347 3066

June 10, 1988

The Honorable Howell T. Heflin
Chairman
Subcommittee on Courts and Administrative Practice
Committee on the Judiciary
United States Senate
223 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Heflin:

We are submitting this statement to reiterate our previous endorsement of S. 929, the Volunteer Protection Act of 1987. The National Easter Seal Society endorsed this legislation on February 14, 1987. We believe that Congressional action on this proposal is long overdue.

An estimated 800,000 Americans volunteer their services to help people with disabilities through Easter Seal programs. We consider our volunteers to be our greatest asset and hope that Congress will act to protect them from the unnecessary risk of exposure to lawsuits. We believe that the enactment of S. 929 is an important step in preserving the strong tradition of voluntarism, which has been the cornerstone of our nation's human service network.

The National Easter Seal Society is the world's oldest and largest nonprofit organization providing direct services to people with disabilities. Founded in 1919, the Society is universally recognized as the organization that pioneered identifying the needs of people with disabilities and providing rehabilitation services to meet those needs.

Through 200 nationwide affiliates, more than a million people receive Easter Seal services each year. The National Health Council has cited Easter Seals as a nationwide leader among voluntary nonprofit health care organizations for percentage of dollars spent on direct client services. The Society's "grassroots" approach enables affiliates to retain 95 percent of all collected revenues in the area where it is raised to support local services. Our ability to maintain a high level of quality services is due, in large part, to the contributed efforts of our volunteers.

In our organization, our volunteers, many of whom are leaders in the business community, are promoting growth and innovation in both the delivery of services and the fundraising activities necessary to finance those services. All of these new activities are developed within the context of our tax-exempt purpose. We are driven by our goal of serving the maximum number of people in the most efficient and effective way.

Volunteers who serve on our National Board devote many hours each year to Easter Seal business. Without their contributions, the work of Easter Seals would be greatly diminished. National Board members assist with marketing, affiliate relations, fund raising, special events, government relations, fiscal management and direct services. Many Board members have spent hundreds of hours spanning twenty-five years working for Easter Seal affiliates at the state and local levels. This commitment is prototypical of board members in voluntary organizations across the nation.

Service fees are based on the client's ability to pay. No one is refused services because of financial limitations. Easter Seals must rely on public contributions to cover program costs for those clients who cannot pay the full costs entailed. The purchasing power of contributed dollars is strengthened by the use of direct service volunteers. The skills and expertise offered by these volunteers at no cost enable Easter Seal affiliates to provide services to individuals with limited resources. In many areas, these individuals would go unserved were it not for the local Easter Seal Society.

For example, Easter Seal volunteers are involved in the design and fabrication of assistive devices. These devices enable individuals with disabilities to communicate, obtain employment, go to school, and participate in a wide range of community activities. In many cases, assistive technology has been the key to enabling an individual with a disability to live independently. However, an increasing fear of liability is preventing many creative individuals from designing new devices that could benefit people with disabilities.

The Volunteer Protection Act is critical to maintaining the spirit of voluntarism that has given rise to so many human service programs in this country. The legislation would not diminish an individual's right to legal redress from willful and wanton misconduct by another. Volunteers must, at all times, adhere to legal and ethical standards of conduct while executing their voluntary activities. However, citizens must be allowed to continue serving in a voluntary capacity without undue fear of liability suits. This legislation will play a major role in alleviating the current liability crisis that is undermining voluntarism in the United States.

We commend the Subcommittee on Courts and Administrative Practice for addressing this critical issue, and appreciate the opportunity to submit this statement for the record.

Sincerely,

Joseph D. Romer
Director of Governmental
Affairs

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TOM YOUNG, SUBCOMMITTEE COUNSEL
223 HART SENATE OFFICE BUILDING
WASHINGTON DC 20510

RE: SENATOR HEFLIN'S MAY 20 HEARING ON S.929

ON BEHALF OF THE 15,000 PLUS VOLUNTEER OFFICERS AND COMMITTEE PERSONS OF CALIFORNIA CREDIT UNIONS, FOR THE OFFICIAL RECORD, THE CALIFORNIA CREDIT UNION LEAGUE STRONGLY SUPPORTS THE ENACTMENT OF S.929. THIS LEGISLATION IS A STEP TOWARD THE LEGISLATIVE REDRESS OF A SERIOUS AND GROWING PROBLEM WHICH IS DRIVING QUALIFIED LEADERS FROM POSITIONS OF TRUST IN THOUSANDS OF VOLUNTEER DEPENDENT ORGANIZATIONS. PLEASE FAVORABLY REPORT S.929.

W F BROXTERMAN, CAE, PRESIDENT & CEO
CALIFORNIA CREDIT UNION LEAGUE
2350 SOUTH GAREY AVENUE
POMONA CA 91766-5898
TELEPHONE 714-628-6044

14:06 EST

MGMCOMP

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TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS